(22,729.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 653.

S. T. GRAY AND ROBERT BRADY, APPELLANTS,

vs.

ROBERT H. TAYLOR, CHARLES W. WINGFIELD, AND ROMUALDO DURAN, THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, TERRITORY OF NEW MEXICO, ET AL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 3, 1911.

1 In the Supreme Court of the United States of America,
October Term, A. D. 1911.

No. —.

S. T. GRAY and ROBERT BRADY, Appellants,
vs.
ROBERT H. TAYLOR et al., Appellees.

Appeal from Supreme Court, Territory of New Mexico.

Transcript of Record.

T. B. Catron, Attorney for Appellants.

2 Be it remembered, that heretofore, on the fifteenth day of August, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico a transcript of record in a certain cause therein entitled, S. T. Gray and Robert Brady appellants vs. Robert H. Taylor, et al., and Numbered 1350 which said transcript of record was and is in part as follows to wit:—

In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1910.

No. 1350.

S. T. GRAY and ROBERT BRADY, Appellants,
vs.
ROBERT H. TAYLOR et al., Appellees.

Appeal from District Court Lincoln County.

Transcript of Record.

T. B. Catron & Geo. B. Barber, Attorneys for Appellants.
Hewitt & Hudspeth, Attorneys for Appellees.

Be it remembered that in the District Court for the County of Lincoln, in the Sixth Judicial District Court for the Territory of New Mexico, in the following entitled cause, to-wit:

No. 1928.

S. T. GRAY and ROBERT BRADY, Plaintiffs,

vs.

ROBERT H. TAYLOR, CHARLES W. WINGFIELD, and ROMALDO DURAN, the Board of County Commissioners of Lincoln County, Territory of New Mexico, and T. W. Watson, Treasurer and ex-Officio Collector of Lincoln County, Territory of New Mexico, and J. G. Riggle, Probate Clerk of Lincoln County, New Mexico, Defendants.

Bill of Complaint for Injunction.

3 the following proceedings were had, to-wit:

On the 22nd day of January, 1910, the plaintiffs in said cause filed in the District Court for the County of Lincoln, a complaint, which said complaint was afterwards amended and the same re-written in the said amended complaint, in full, and is therefore not here inserted, but in the amended complaint it is referred to as containing the same.

To which said complaint the defendants, on the 21st day of February 1910, filed their answer, which said answer is all incorporated in and is a part of the answer by them made to the plaintiff's amended and supplemental complaint thereafter, by leave of the Court, filed in said cause, and for that reason the same is not here copied or set out in full, but the said answer to the said amended and supplemental complaint is here referred to as containing the said answer in this paragraph referred to as filed on the 21st day of February, 1910.

And afterwards, towit, on the 4th day of April A. D., 1910, there was filed by the plaintiffs in said cause an amended and supplemental complaint which is in the words and figures following to-wit:

In the District Court of the Sixth Judicial District of the Territory of New Mexico within and for the County of Lincoln.

S. T. GRAY and ROBERT BRADY, Plaintiffs,

vs.

ROBERT H. TAYLOR, CHARLES W. WINGFIELD, and ROMALDO DURAN, the Board of County Commissioners of Lincoln County, Territory of New Mexico, and T. W. Watson, Treasurer and ex-Officio Collector of Lincoln County, Territory of New Mexico, and J. G. Riggle, Probate Clerk of Lincoln County, and Ben Betzhel, Defendants.

To the Honorable Alford W. Cooley, Associate Justice of the Supreme Court of the Territory of New Mexico in and for the County of Lincoln, in said Territory, for the trial of causes arising
4 under the laws of the Territory:

S. T. Gray and Robert Brady, the plaintiffs in the above entitled cause, residents of the County of Lincoln, in the Territory of

New Mexico, by leave of the Court first had, show that *on* or about the month of January, last they filed their original complaint in this court against Robert H. Taylor, Charles W. Wingfield and Romaldo Duran, The Board of County Commissioners of Lincoln County, Territory of New Mexico; and T. W. Watson, Treasurer and Ex-officio Collector of Lincoln County, Territory of New Mexico, and J. G. Riggle, Probate Clerk of Lincoln County, New Mexico, stating in substance, among other things, as follows:

"S. T. Gray and Robert Brady, plaintiffs and residents of the county of Lincoln, Territory of New Mexico, bring this their bill of complaint against Robert H. Taylor, Charles E. Wingfield, and Romaldo Duran, The Board of County Commissioners of Lincoln County, Territory of New Mexico; and T. W. Watson, Treasurer and Ex-Officio Collector of Lincoln County, Territory of New Mexico; and J. G. Riggle Probate Clerk of Lincoln County, New Mexico, defendants, and thereupon your plaintiffs complain and say:—

"That Robert H. Taylor, Charles W. Wingfield and Romaldo Duran are duly elected, qualified and acting Board of County Commissioners of Lincoln County, New Mexico; that T. W. Watson, is the duly elected qualified and acting Treasurer and Ex-officio Collector of said County, and that J. G. Riggle is the duly elected, qualified and acting Probate Clerk of said Lincoln County.

"That the plaintiffs are tax paying residents of the county of Lincoln and have a manifest and substantial interest in the matters and things alleged in this complaint.

"That, therefore, to-wit, on the ninth day of July 1909 at a meeting held by the defendant, The Board of County Commissioners of said Lincoln County, Robert H. Taylor, Chairman of the said Board, combining and confederating with his co-commissioner Charles W. Wingfield, to order an election held in said county, to vote on the proposition to remove the county seat of said county from the town of Lincoln to the town of Carrizozo, and said Taylor and said Wingfield constituting a quorum of said Board, did then and there illegally and wrongfully make an order calling such an election and ordering the same to be held on the seventeenth day of August, 1909, which said pretended election was held on said day without any registration of the voters of Lincoln County, and at said election a great number of persons voted who were not qualified electors of the county of Lincoln, and a great amount of money was fraudulently used to carry said pretended election in favor of the town of Carrizozo, and on account of such fraudulent doings a majority vote was cast at said pretended election in favor of the town of Carrizozo.

"The plaintiffs further say that all the foregoing actings and doings were done under a pretended act of the Territorial Legislative Assemble of the Territory of New Mexico styled Chapter 80, and printed on pages 217-218-219 of the 1909 Acts of said Legislative Assembly, and Act entitled "An Act relating to the changing of county seats" Council Bill No. 86; Law by limitation, March 18, 1909.

"The plaintiffs aver and charge the truth to be that the county

of Lincoln is possessed of public buildings consisting of a court house and jail, situate at the county seat, the town of Lincoln, the original construction of which cost said county more than the sum of thirty thousand dollars, and that the public records of said county disclose this fact; and that before an election to change the county seat could be legally ordered held under the above mentioned pretended Council Bill No. 86, a deposit of the sum of forty thousand dollars must be made with the Treasurer of said county as a condition precedent to the ordering of such election to vote on the proposition of changing the county seat; and that no person or persons have deposited with said Treasurer the sum of forty thousand dollars nor any other sum of money to build a court house and jail at the town of Carrizozo.

"The plaintiffs further say that the defendants have given out and threatened the sale of bonds of Lincoln County, in the
6 sum of twenty-eight thousand dollars, for the purpose of raising money to build a court house and jail buildings at the town of Carrizozo, and the plaintiffs believe that they will carry their said threat into execution, and thereby do these plaintiffs and other tax payers of Lincoln County an irreparable injury by creating an unlawful debt and obligation against the said county of Lincoln, unless they the said defendants are at once restrained by your honor's writ of injunction from so doing. And the plaintiffs further say that said threatened bond issue and sale is close at hand and that the plaintiffs have not the time to obtain affidavits and documentary proof to file with and in support of this complaint, and they ask the court for leave to hereafter file such affidavits and documentary proof in support of this bill of complaint.

"The plaintiffs further say that they have been reliably informed, therefore, they believe the truth to be that said pretended enactment, styled Council Bill No. 86, has no force of law, and is an eillegal enactment; and never should have been printed into the session laws of this Territory, because the so called and styled enactment in the course of its supposed passage, through the Legislature, was not signed by the Speaker of the House nor the President of the Council that attempted to make such signing by its presiding officers mandatory upon them, and that the Supreme Court of the United States, has passed upon this question and has decided that such signing by presiding officers was mandatory upon such presiding officers, to pass, and give the force of law to an enactment; and the Plaintiffs are further reliably informed, therefore, they state the truth to be that in consequence of such so called enactment styled Council Bill No. 86, having been wrongfully printed as aforesaid into the said session laws of this Territory, a resolution has been introduced before the lower House of the Congress of the United States to annul and disapprove said so called enactment.

"Wherefore, the plaintiffs pray for a writ of injunction to restrain defendants in their several respective official capacities as
7 county officers, from issuing, signing, sealing and endorsing, and negotiating the sale of Lincoln County Bonds, for the sum of twenty-eight thousand dollars, or for any other sum of

money, to raise money to construct a court house and jail at the town of Carrizozo, or in any manner permitting such to be done until the further order of this court.

"And that upon the final hearing of this case, a decree be entered in effect that the legal county seat of Lincoln County is located at the town of Lincoln, New Mexico, and that the plaintiffs have such other and further relief as to your honor may seem meet and just."

The plaintiffs further show that the said defendants, Robert H. Taylor, Charles W. Wingfield, and Romualdo Duran, The Board of County Commissioners of Lincoln County, Territory of New Mexico; and T. W. Watson, Treasurer and Ex-Officio Collector of Lincoln County, Territory of New Mexico; and J. G. Riggle, Probate Clerk of Lincoln County, appeared and filed answer to the said complaint, and these plaintiffs replied to the same.

Plaintiffs further show, by way of supplemental, leave of the court having — first granted thereof, that since the said complaint was filed in said court the plaintiffs applied to the Honorable Associate Justice assigned to that district to grant the injunction prayed for in said complaint; that the said Judge or Court declined, at the time, to grant said injunction on the ground as they are informed and believe that there was no imperative necessity for immediate action in that regard, and that the Board of County Commissioners and Treasurer and Clerk of said county would not execute, certify and negotiate or dispose of said bonds while there was another action pending to enjoin the election referred to in the complaint herein and while this action was pending and undetermined for the purpose of enjoining the issue of the bonds and otherwise as therein stated; and further on the ground that the judge of the Court desired to inform himself, if possible, as to what action would be taken by Con-
8 gress on the resolution introduced there to nullify and disapprove the Act of the Legislative Assembly under which the Board of County Commissioners and other defendants had taken their action in reference to the removal of said county seat. That so being informed and believing the truth to be, the said cause was put at issue, an examiner was appointed to take the evidence as did also the defendants. The defendants believing from the information received that the said Board of County Commissioners would not issue said bonds and negotiate the same or receive the money therefor until this action was determined and the other action disposed of in regard to holding said election, and much more forcibly and strongly did they believe that no steps would be taken by the said Board of County Commissioners or other officers of said county towards contracting for the erection of a court house and jail at Carrizozo or any proceedings undertaken towards the erection thereof; but they state the fact to be that notwithstanding their said information and belief and the assurance which they thereby had, which they relied upon, the said Board of County Commissioners, acting by a majority of its members only, and the said Treasurer and the Clerk of said Board proceeded to issue the said bonds to the amount of twenty-eight thousand dollars of the said County of Lincoln with interest coupons attached thereto, representing the interest payable on the

said bonds, all of which said bonds and coupons were signed, sealed, executed, certified and registered by them pretending to do so in accordance with forms and provisions of law, but as plaintiffs allege in violation of law.

And plaintiffs further allege that notwithstanding the information and assurances they had received as aforesaid as to the reason as to why the court, at the time it was requested, declined temporarily to issue said injunction, the said defendants in said original complaint proceeded to negotiate, sell and dispose of said bonds and receive into the Treasury of said County the proceeds thereof, amounting, as they are informed and believe, to about twenty-eight thousand dollars in cash, and also, that, notwithstanding said
9 information and *and* assurances, and notwithstanding the pendency of this action, the said defendants, the Board of County Commissioners, have pretended to enter into a contract with one Ben Betshel, a resident of the County of Curry in the Territory of New Mexico, for the erection of a court house and jail for said County at Carrizozo in said County, which place these plaintiffs are advised and so allege the fact to be, is not the lawful county seat of said county, and said buildings cannot lawfully be erected at said place and the moneys of said county cannot lawfully be expended therefor, for the reason that no lawful election to vote upon the removal of said county seat was ever lawfully and properly ordered, there never having been a legal petition in any way or composed of a number of legal voters in said county, that is, qualified electors of said county equal in number to at least one half of the legal votes cast at the last preceding general election in said county presented to said Board of County Commissioners asking for the removal of the county seat of said county to some other designated place, although it is true that a petition of other character was presented to said Board of County Commissioners having the names of a sufficient number of persons attached thereto to equal one-half of the number of legal votes cast in said county at the last preceding general election; but these plaintiffs allege that all of the names to said petition were not genuine; that a large number of them were not signed to the petition by the persons of that name themselves, but were without authority signed by some other person or persons; that a large number of the said names were fictitious and represented no persons who were bona fide citizens of said county; that a large number of said names were obtained by means of fraud, deception and misrepresentations made to citizens of the said county, that the petition was for another and a different purpose than that which was expressed upon its face; that the said petition was in the English Language and a large number of the said signers thereof were ignorant of the English language and only spoke the Spanish language, and a large number of them were unable to read and write and unable to read said
10 petition for themselves, and to those people who were ignorant of the English language and could not read and write and whose names were secured to the said petition it was falsely and fraudulently represented to them that the said petition was for some other purpose than that of asking for the holding of an election for

the removal of the county seat to some other place than that where it then was, and also for some other purpose than that of asking for the removal of said county seat to some other place, so that all of said persons amounting to several hundred who could not understand the English language and could not read and write, were deceived by the false representations and fraud aforesaid, and thereby induced to sign by the false representations and fraud aforesaid, and thereby induced to sign or allow their names to be signed to said petition against their will and wish, they not being in favor of the removal of said county seat to some other place.

Plaintiffs are further informed that a large number of the signers of said petition were not actual bona fide residents of the said county and qualified electors therein at the time they signed said petition and that many of the persons whose names were signed to said petition were, as they are informed and believe, induced to sign the same by means of corruption and the payment to them of a consideration therefor; that if the parties who it is herein alleged signed said petition illegally and wrongfully or improperly, or whose names were placed thereto without their authority, or whose names were fictitious and not genuine, or who in ignorance of its true purpose were induced to sign the same or allowed their names to be signed thereto on account of false and fraudulent representations as to the purpose thereof, were eliminated from the said petition, the number of signers to said petition would fall very far short of one-half of said legal votes, in number, cast at the last general election in said county.

They further allege, by way of amendment, that a pretended election was held in said county, as alleged in the original complaint herein, but that it was in violation of law because no legal
11 petition had been presented to the Board of County Commissioners, as foresaid shown, authorizing the holding of any such election; that when said election was held, as alleged in the original complaint, it was held without any registration of the voters having been made who were qualified to vote at said election as required by law, and for that reason was illegal, invalid and void; that at said election, so pretended to be held, a majority of the lawfully qualified electors of said county did not vote for the removal of the county seat to Carrizozo, but a majority of them voted otherwise; that although it appeared by the returns that a majority of the votes cast at said pretended election was [illegible] of the removal of said county seat to Carrizozo, yet, a very large number of voters who voted at said election and particularly those who voted in favor of the removal of the said county seat to Carrizozo, were illegal, fraudulent, fictitious votes, not cast by qualified electors of said county not by bona fide residents and qualified voters of said county; that a very large number of the names which are represented by said returns to have been voted by persons at said election were fictitious names and names which did not represent any person and much less any bona fide resident and qualified elector of said county; that money was fraudulently used with a large number of them as plaintiffs are informed and believe, to bribe electors and qualified voters

of said county and many who were not qualified voters of said county to vote at said election, and particularly to vote for the removal of said county seat to Carrizozo.

By way of further supplemental allegations to said complaint, plaintiffs allege that, prior to the issuance of the bonds in question and subsequent to the holding of said pretended election, said Board of County Commissioners of said County has held several pretended meetings thereof at the town of Carrizozo without anyone, except themselves, so far as plaintiffs are informed and believe, having any notice of such meetings or without giving any notice thereof and without having their Clerk present at one of more of said
12 meetings; that at least one of said meetings was held at said Carrizozo and an attempt made to sign and seal said bonds, but they had no clerk or seal present and said meeting was adjourned without completing said work, and thereupon said Board of County Commissioners adjourned and went to the said town of Lincoln, the County seat of said county, where said clerk had his office and kept the seal of said county and where the treasurer kept his office, and without holding or opening any session of said Board at the said town of Lincoln, but in the night-time they got together and pretended to order and direct the said Probate Clerk of said county and the Treasurer of the said county to sign said bonds without giving any notice of such meeting or without the public having any means or notice thereof or an opportunity to be present and protest against said action; that said meeting, if any such was held, was held not during business hours and not one wherein the public might have notice thereof.

And plaintiffs are further informed and believe that there is no court house and was not at the time of those meetings in Carrizozo any court house in said town of Carrizozo in which said Board of County Commissioners was authorized to meet and hold the sessions of said Board, as plaintiffs are advised, informed and believe the fact to be.

By way of further supplemental allegation to said complaint, plaintiffs allege that they are informed and believe that the said Ben Betzhel, with whom said alleged contract has been made by the said Board of County Commissioners to erect said court house and jail, is about to proceed with the work upon the same and to the erection thereof and he gives out and threatens that he intends to proceed expeditiously to erect the said court house and jail at Carrizozo at the expense of said county, in accordance with the alleged contract which has been made with him for that purpose with the Board of County Commissioners of said County.

Plaintiffs are not informed as to the exact contents of said contract and are therefore unable to state the same, and have not the possession of the original or any copy of said contract and are
13 therefore unable to attach the same to this complaint; but plaintiffs further aver that the said Board of County Commissioners and a majority of the members thereof and the said Treasurer of said County gave out, threaten and declare that they will make payments to the said contractor Ben Betshel, for his work, labor and material as he proceeds with the same under said contract

in the construction of said court house and jail at Carrizozo, and that payment for the same will be made out of the moneys received and now in the Treasury of said County from the proceeds of the said twenty-eight thousand dollars in bonds.

Plaintiffs allege, as they are advised and believe, that the county seat of the said County of Lincoln has never been lawfully located or established at Carrizozo, and that the expenditure of the said moneys in the erection of the court house and jail at said Carrizozo would be illegal and invalid, and a total loss of the same to the said county of Lincoln and would thereby become a heavy burden upon the taxpayers of said county to pay the same and the interest accruing thereon. They greatly fear that if not restrained and prevented by an injunction issuing out of this court at once to that end, the said Ben Betzhel will proceed and continue with the erection of said court house and jail and that the said Board of County Commissioners and said Treasurer, T. W. Watson, of said County of Lincoln, will pay out to the said Ben Betzhel from the said moneys the cost of the construction of said court house and jail according to the terms of said contract between them, and that thereby there will be entailed upon said county of Lincoln and the said tax payers thereof great and irreparable loss and damage; that the said County Commissioners are each under bond of only five thousand dollars for the faithful discharge of the duty of that office as members of the Board of County Commissioners of said County, which is not sufficient to secure and protect the said county and the tax payers of said county from the loss and damage which will accrue to them by reason of the erection of the said court house and jail at Carrizozo and the
14 expenditures of said money arising from the proceeds of said bonds in payment therefor.

Inasmuch therefore, as the plaintiffs are without plain, adequate and complete remedy by the rules of common law in the premises and are only relievable in equity, they apply to your honor for equitable relief and pray that you will grant to them and caused to be issued, immediately, an injunction, directed to the said defendants in the original complaint, enjoining and restraining them from paying out any moneys in the treasury of the said county to the said Ben Betzhel, or any one else towards the erection or for the erection of any buildings for a court house and jail at the said town of Carrizozo in said county. That the said Ben Betzhel be made a party defendant to said suit, and that an injunction also be issued and granted against him restraining and enjoining him from erecting any building for a court house and jail in said county of Lincoln at Carrizozo in said County under the said alleged contract with him or under any pretext whatever and that upon a final hearing of this cause injunction so prayed for may be made perpetual, and that plaintiffs may have such other and further relief as the nature of the case requires and to the court may appear to be meet and proper.

(S'g'd) G. B. BARBER AND
T. B. CATRON,
Attorneys for Plaintiffs.

15 TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

Before me the undersigned, personally appeared S. T. Gray and Robert Brady, plaintiffs in the above entitled cause, and being by me duly sworn, upon their oaths, each respectively says that he has heard read over and understands the contents of the foregoing complaint and that the same is true of his own knowledge, except as to the matters and things therein stated on information and belief, and as to those each of them believe it to be true.

(Sgd.) S. T. BRADY.
[SEAL.] (Sgd.) ROB'T BRADY.

Subscribed and sworn to before me this 30th day of March, A. D. 1910.

(Sgd.) JOHN M. PENFIELD,
Notary Public.

My Commission expires the 6th day of May, 1912.

And afterwards, towit, on the 3rd day of March, 1910, the said defendants, Romaldo Duran, and J. G. Rigle, filed an answer in said cause, which said answer is in the words and figures following to-wit:

In the District Court of the Sixth Judicial District of the Territory of New Mexico, within and for the County of Lincoln.

No. 1928.

S. T. GRAY and ROBERT BRADY, Plaintiffs,
VS.
ROBERT H. TAYLOR, CHARLES W. WINGFIELD, and ROMALDO MARTINEZ, the Board of County Commissioners of Lincoln County, Territory of New Mexico, and T. W. Watson, Treasurer, and ex Officio Collector of Lincoln County, Territory of New Mexico, and J. G. Riggle, Probate Clerk of Lincoln County, New Mexico, Defendants.

16 *Bill of Complaint for Injunction.*

Now at this day comes Romualdo Duran, member of the Board of County Commissioners for Lincoln County, Territory of New Mexico; and J. G. Riggle, Probate Clerk of Lincoln County, Territory of New Mexico, defendants in the above entitled cause, and for answer to the plaintiffs' complaint filed herein, say:

That they admit plaintiffs are tax paying residents of the County of Lincoln, as alleged in plaintiffs' bill of complaint.

These defendants further answering say, that they have in person made a th-rough examination of the public records of Lincoln County, and that they admit that the county of Lincoln is now possessed of public buildings consisting of a court house and jail

situate at the county-seat the town of Lincoln, the original construction of which said building, cost said county as shown by its public records more than the sum of thirty thousand dollars.

These defendants answering further, say that they admit that no person or persons have deposited the sum of forty thousand dollars with the Treasurer of Lincoln County, to build a court house and jail buildings at the town of Carrizozo.

These defendants further answering say that, as to all other matters and things alleged against them in plaintiffs' said bill of complaint, not heretofore and herein answered, they have no knowledge upon which to make answer, therefore they leave such matters and things to be proven by the plaintiffs in this cause.

These defendants further say that they have not authorized any person to answer for them in this cause, and if answer has been made, or plea filed for them, they disown and disapprove of same, and they claim the right to file and stand upon this answer made by themselves in person.

Wherefore these defendants pray to go hence with their costs most wrongfully sustained.

17 (Signed) ROMUALDO DURAN,
Member of the Board of County Commissioners,
Lincoln County, New Mexico;
Signed) J. G. RIGGLE,
Probate Clerk of Lincoln County, New Mexico,
Defendants.

TERRITORY OF NEW MEXICO,
Lincoln County, ss:

Before me the undersigned authority, personally appeared Romualdo Duran, and J. G. Riggle, to me personally known to be the identical persons, who hold the respective county offices above designated under each of their respective names, and they being by me first duly sworn, did say that they *that they* caused the foregoing answer to be prepared for them *that;* that they have read over and fully understand the same signed by them as defendants; that said answer is true to their own knowledge, except such matters and things therein stated on information and belief, and as to such matters and things they believe it to be true.

(Sgd.) ROMUALDO DURAN.
(Sgd.) J. G. RIGGLE.

Subscribed and sworn to before me this 25th day of February, 1910. My commission expires May 8th, 1912.

(Sgd.) JOHN M. PENFIELD,
[SEAL.] *Notary Public.*

And afterwards on towit, *on* the 2nd day of March, A. D. 1910 the said plaintiffs filed in said court theyr reply to the answer of defendants in said cause, which is in words and figures following towit:

In the District Court, Sixth Judicial District of the Territory of New Mexico, within and for the County of Lincoln.

No. 1928.

S. T. GRAY and ROBERT BRADY, Plaintiffs,
vs.
ROBERT H. TAYLOR, CHARLES W. WINGFIELD, ROMUALDO DURAN et als., Defendants.

Plaintiffs' Reply to Defendants' Answer.

The plaintiff- replying to the answer (sworn to by Robert H. Taylor,) of the defendants herein say:

18 The plaintiffs' bill of complaint is true, and the defendants' answer, as set forth, is not true, and this they are ready to prove; Wherefore plaintiffs ask judgment as in their complaint prayed for.

(Sgd.) S. T. GRA-,
ROBERT BRADY, *Plaintiffs.*

(Sgd.) GEO. B. BARBER,
Attorney for Plaintiffs.

TERRITORY OF NEW MEXICO
County of Lincoln, ss:

Robert Brady, one of the above named plaintiffs, being first duly sworn, says that he has read the foregoing reply to defendants' answer, and understands the contents of same, and that said reply is true to his own knowledge.

(Sgd.) ROBT. BRADY.

Subscribed and sworn to before me this 26th day of February, 1910. My Commission expires May 6th, 1912.

(Sgd.) JOHN M. PENFIELD,
[SEAL.] *Notary Public.*

And thereafter, to-wit, on the 4th day of April, A. D. 1910, an order was made by the Court in said cause which is in words and figures as follows, to-wit:

In the District Court of the Sixth Judicial District of the Territory of New Mexico within and for the County of Lincoln.

No. 1928.

S. T. GRAY and ROBERT BRADY, Plaintiffs,

vs.

ROBERT H. TAYLOR, CHARLES W. WINGFIELD and ROMUALDO Duran, the Board of County Commissioners of Lincoln County, Territory of New Mexico, and T. W. Watson Treasurer, and ex-Officio Collector of Lincoln County, Territory of New Mexico, and J. J. Riggle, Probate Clerk of Lincoln County, New Mexico, Defendants.

On reading and filing the petition of the plaintiffs S. T. Gray and Robert Brady, in the above entitled cause, which was duly verified on the 23rd day of March, 1910, before the Hon. John R. McFie Associate Justice of the Supreme Court of the Territory of
19 New Mexico and said petition coming on for hearing this the 4th day of April, A. D. 1910, before the undersigned Associate Justice of the Supreme Court of New Mexico, at the Court House of Guadalupe County, in Santa Rosa, there being present both parties represented by their attorneys, and after hearing counsel pro and con in reference to the prayers of the said petition, and after hearing the proposed *the proposed* amended and supplemental complaint for the filing of which leave is prayed in said petition and the court being fully advised in the premises orders, adjudges and decrees that leave be and hereby is given for the said plaintiffs to file said amended and supplemental complaint as prayed for in the said petition, and that the said Ben Betzhel be made a party defendant to said amended and supplemental complaint and the said plaintiff having immediately in accordance with said leave filed said amended and supplemental complaint, and the court having considered the same, after hearing the said defendants, except the said Ben Betzhel, and being fully advised in the premises does hereby order, adjudge and decree that a writ of injunction issue out of the District Court in and for the County of Lincoln in the Territory of New Mexico directed to the said defendants in the said amended and supplemental complaint restraining and enjoining them until the determination of this cause or until the further order of the court in the premises from taking any steps or proceedings whatever towards, of for the erection of a court house and jail or either of them, at the town of Carrizozo in said county of Lincoln, and from paying out any of the moneys of the said county for such purpose, And that said injunction be directed to and operate upon each of the said defendants individually, as well as the whole of them.

It is further adjudged and decreed that a summons issue immediately and be served as soon as practicable upon the said Betzhel, as a party defendant in said cause in accordance with the practice of this court in such cases, requiring and summoning him to enter

his appearance in said cause and make answer to the same as a defendant therein, and that said cause shall be put at issue within all possible speed. That upon said cause being at issue the said plaintiffs be and they hereby are granted and given five days' time in which to introduce any further evidence in support of their amended and supplemental complaints, or in rebuttal of the evidence already taken in said cause.

It is further ordered, adjudged and decreed that the evidence which has already been taken on behalf of the plaintiffs and defendants in said cause stand as evidence in said cause the same as if it had been taken under the amended and supplemental complaint.

Dated this 4th day of April, A. D. 1910.

(Sgd.) ALFORD W. COOLEY,
Associate Justice of the Supreme Court of the Territory of New Mexico.

And afterwards towit, on the 8th day of April, 1910, the defendants in said cause filed their answer in said court to the said amended and supplemental complaint, which is in words and figures following, towit:

TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

In the District Court.

Civil Action. No. 1928.

S. T. GRAY et al.
vs.
BOARD OF COUNTY COMMISSIONERS et al., Defendants.

Answer.

The defendants, by Hewitt & Hudspeth, duly authorized by order of the Court as associate counsel for the original defendants, and appearing for the defendant, Ben Betchel, come and in answer to the supplemental complaint filed herein by the plaintiffs, say*s:*

1. They deny that the county of Lincoln, New Mexico, is possessed of public buildings consisting of court house and jail situated at the town of Lincoln, the original construction of which cost said county more than thirty thousand dollars.

2. Defendants deny upon information and belief, that Council Bill No. 86 was unsigned by the speaker of the House and President of the Council of the Legislative Assembly of the Territory of New Mexico of 1909 which enacted said law.

3. They deny, on information and belief, that any resolution has been adopted by either House of Congress annul-ing or disapproving said Council Bill No. 86.

4. They deny, on information and belief, that any of the names signed to the petition for the election for the removal of the county

seat of said county from Lincoln to Carrizozo were so signed by other than persons who were legal voters of said county; they deny, on information and belief, that any fraud, deception or misrepresentations were used in procuring signatures to said petition, as to the object and purpose of the same.

4. They deny, on information and belief, that the number of bona fide residents and legal voters of said county signing said petition was less than one-half the votes cast at the next preceding general election in said county of Lincoln.

6. They deny, on information and belief, that any of the votes cast for Carrizozo, on the 17th day of August, 1909, for the removal of said county seat, were illegal, fraudulent or fictitious; they likewise deny that any of the votes cast for Carrizozo were so cast by persons other than bona fide residents and qualified voters of said county; they deny upon information and belief, that money was used to bribe electors and qualified voters of said county to vote for the removal of said county seat to Carrizozo.

(Sgd.) HEWITT & HUDSPETH,
Attorneys for Defendants.

TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

Robert H. Taylor, one of the defendants in the above entitled cause, being first duly sworn, says that he has read the foregoing answer of the defendants to the supplemental complaint of the plaintiffs and knows the contents thereof and that the same is
22 true to his knowledge except as to those matters therein stated on information and belief and as to those matters he believes them to be true.

(Sgd.) ROBT. H. TAYLOR.

Subscribed and sworn to before me this the 7th day of April, 1910.

[SEAL.] (Sgd.) EDGAR H. B. CHEW,
Notary Public.

My Commission expires April 5, 1913.

And afterwards towit, on the 13th day of April, 1910, the plaintiffs in said cause filed their reply to defendants ans-er to sup-lemental complaint in said court, which is in the words and figures following towit:

In the District Court of the Sixth Judicial District of the Territory of New Mexico within and for the County of Lincoln.

#1928.

S. T. GRAY and ROBERT BRADY, Plaintiffs,
vs.
ROBERT H. TAYLOR, CHARLES W. WINGFIELD, ROMADLO DURAN et al., Defendants.

Plaintiffs' Reply to Defendants' Answer to Supplemental Complaint.

The plaintiffs, replying to the supplemental answer of defendants herein, as sworn by Robert H. Taylor, say:

That plaintiffs' amended supplemental complaint is true, and the defendants' answer to said supplemental complaint, as set forth, is not true, and this they are ready to prove.

Wherefore, plaintiffs ask judgment as in their amended and supplemental complaint prayed for.

(Sgd.) T. B. CATRON,
G. B. BARBER,
Attorneys for Plaintiffs.

(Sgd.) S. T. GRAY,
ROBERT BRADY,
Plaintiffs.

TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

Robert Brady, one of the above named plaintiffs being first duly sworn, says that he has read the foregoing reply to defendants' answer to plaintiffs' amended and supplemental complaint and understands the contents of same and that said reply is true to his own knowledge.

(Sgd.) ROBERT BRADY.

Sworn to and subscribed to before me this 13th day of April 1910.

[SEAL.] (Sgd.) J. G. RIGLE.

And afterwards, to-wit on the 4th day of April, 1910, there was issued out of the said court a writ of injunction in said cause which is in the words and figures following, to-wit:

The Territory of New Mexico to R. H. Taylor, C. W. Wingfield, and R. Duran, Commissioners of Lincoln County; T. W. Watson, Treasurer; J. G. Riggle, Probate Clerk, and Ben Betzhol, Greeting:

Whereas, S. T. Gray and Robert Brady, has filed their certain Bill in Chancery in our District Court of the Sixth Judicial District of the Territory of New Mexico, within and for the county of Lincoln against you, the said R. H. Taylor, C. W. Wingfield, and R. Duran, Commissioners of Lincoln County, T. W. Watson, Treasurer, J. G.

Rigle Probate Clerk and Ben Betzhel, your agents, employés, servants, attorneys and counselors, defendants, to be relieved touching the matters therein complained of, and which bill is still there pending.

We, therefore, in consideration of the premises and of the particular matters in said bill set forth do strictly enjoin and command you the said R. H. Taylor, C. W. Wingfield, and R. Duran, Commissioners of Lincoln County, T. W. Watson, Treasurer, J. G. Rigle, Probate Clerk, and Ben Betzhel, your agents, employees, servants, attorneys and counsellors and all and every the persons before mentioned, and each and every one of you, under the penalty of the law thence ensuing, that you and every one of you, do absolutely desist and refrain from taking any steps or proceedings whatever towards or for the erection of a court house and jail or either of them at the town of Carrizozo in said county of Lincoln and from paying out any of the moneys of the said county for such purpose, said injunction being directed to and operative upon each of the said defendants, individually, as well as the whole of them, until the
24 further order of this court.

Witness, the Hon. Alford W. Cooley, Associate Justice of the Supreme Court of the Territory of New Mexico and Judge of the Sixth Judicial District Court thereof, and the seal of the said Court this the 4th day of April, A. D., 1910.

[SEAL.] (Sgd.) CHAS. P. DOWNS, *Clerk.*

Endorsed thereon; as follows:

TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

This is to certify that I received this writ of injunction on the 4th day of April, 1910, and that I served the same the same day on Ben Betzel one of the defendant named therein, at said County and Territory, by delivering to the said Ben Betzhel a copy of this writ, certified under the hand of the Clerk and the seal of the Sixth Judicial District Court of the Territory of New Mexico.

Dated April 4th, 1910.

(Sgd.) CHARLES A. STEVENS, *Sheriff,*
By LEO OSWALD, *Deputy Sheriff.*

Service and Return $1.50.
Paid.
LEO OSWALD, *Dep.*

And afterwards, to-wit on the 2nd day of March, A. D., 1910, there was filed with the clerk of said Court in said cause a motion for the appointment of a special master which is in the words and figures following towit:—

In the District Court of the Sixth Judicial District of the Territory of New Mexico with and for the County of Lincoln.

No. 1928.

S. T. GRAY and ROBERT BRADY, Plaintiffs,
vs.
ROBERT H. TAYLOR, CHARLES W. WINGFIELD, ROMALDO DURAN et al., Defendants.

Now come the plaintiffs in the above styled and numbered cause, by their attorney of record, and show to the court now here, that said cause is now at issue upon plaintiffs' bill of complaint, defendants' answer thereto, and plaintiffs' reply to defendants' answer; Wherefore the plaintiffs now move the court for appointment by your Honor, of a Special Master in Chancery, to take the testimony in said cause, and report the same to the Court with all convenient speed.

(Sgd.) GEO. B. BARBER,
Attorney for Pl'f's.

To Messrs. Hewitt & Hudspect, Associate Counsel for Defendants, White Oaks, N. M.:

Please take notice that I will bring the above motion on for hearing and determination, before the Judge of the Sixth Judicial District Court of the Territory, at his Chambers in the town of Alamogordo N. M. on the fifth day of March, 1910, or as soon thereafter as a hearing can be had.

(Sgd.) GEO. B. BARBER,
Attorney for Plaintiffs, Lincoln, New Mexico.

And afterwards, to wit, on the 5th day of March, A. D., 1910, an order appointing a special Master, in said cause was made and filed, with the Clerk of said Court therein, which is in words and figures following to-wit:—

In the Sixth Judicial District Court of the Territory of New Mexico in and for Lincoln County.

No. 1928.

S. T. GRAY et al.
vs.
THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY et al., Defendants.

This cause coming on to be heard on the application of plaintiffs for the appointment of a Special Master herein, and the Court having considered said application, does order that William F. A. Girke, Esq. of Lincoln County, be and he is hereby appointed Examiner to

take such testimony as may be submitted to him on behalf of the plaintiffs and the defendants, and report the same to the Court within thirty days from his receipt of this order.

It is further ordered that the plaintiffs have fifteen days in which to submit their testimony in chief; that the defendants shall have ten days thereafter, wherein to submit their testimony in defense and the plaintiffs five days for rebuttal.

Done at Chambers at Alamogordo, in said District this 5th day of March, 1910.

(Sgd.) ALFORD W. COOLEY, *Judge.*

26 Thereafter on the 16th day of April, A. D., 1910, the said Special Master filed in the Office of the Clerk of the Court in said cause the testimony taken by him, which will be hereafter set out in full.

And thereafter, the court, upon the consideration of the said evidence, rendered the following opinion in said cause, which is in words and figures as follows, towit:—

TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

In the District Court.

Civil Action No. 1928.

S. T. GRAY et al.
vs.
THE BOARD OF COUNTY COMMISSIONERS et al.

Opinion.

The validity of the Act of the Legislative Assembly, authorizing elections for changing county seats, is attacked, for the reason that the enrolled bill, now on file in the office of the Secretary of the Territory, does not have upon it the signatures of the presiding officers of each branch of the legislature.

The journals of each house show the passage of the Act, as well as do the endorsements of the Chief Clerks of each house, and the message of the Governor, to the effect that he had allowed the Act to become law by limitation.

The signature of the presiding officers of each house, are required only by the rules adopted by each house, not joint rules but separate regulations of both houses for the conduct of business therein. There is no law of the Legislature nor Act of Congress controlling the method of the authentication of bills passed by the Legislative Assembly of New Mexico.

The mere showing that the Act as deposited in the Secretary's office fails to show compliance with a rule of each house as to authentication in the place of the journals of each house, in the face of

the message of the Governor, the endorsements of the Chief
27 clerks of each branch of the legislature to the effect that the bill was passed by the legislature, is not sufficient to justify the holding that the law is invalid.

If it were not so, every law on the statute books in this Territory, might be nullified by an interested person having access to the files of the Territorial Secretary's office, removing the signature of the speaker of the House and President of the Council.

Cottrell vs. State, 9 Nebrs. 125; Leavenworth Co. vs. Higenbothen, 17 Kansas, 74; Taylor vs. Wilson, 17 Nebr. 88; McDonald vs. State, 80 Wis. 407; In Re Ryan, 80 Wis. 414.

II. It is claimed by the plaintiffs that the evidence before the Court establishes the fact that the cost of the original construction of the court house and jail in Lincoln, New Mexico, amounted to $31,137.09.

The first item of $15,000.00 expended in the purchase of a court house in 1880, included 120 acres of land, out of which several tracts, the acreage of which is not definitely defined, were reserved? It is impossible for the court to say that the buildings cost $15,000.00 or half of it.

Included also in this amount are several items, for instance, $1,500.00 for roofing done in 1892, and 1901. It is asserted by counsel for plaintiffs that these items should be classed as original construction, for they say the work included ceilings for the court rooms and county officers, but the record shows that these amounts were paid, for: "roofing court house" page 54 and "court house and jail repairs" pages 56 and 7. There is also an item of $534.10 paid for metallic cases for Clerk's office, which should be classed as office furniture.

The testimony taken before the referee leaves in doubt whether the sum of $8,000.00, as claimed by plaintiffs, was expended in the construction of the jail, or only $4,000.00; while the record contains a contract for the buolding and furnishing of the jail of over $6,000.00 yet only $4,000.00 of warrants were actually issued
28 on that account and some $700.00 for plastering and other extra work done in the jail.

It was incumbent on the plaintiffs, for the purpose of this hearing, to establish by a preponderance of the evidence that the original construction of the court house and jail in Lincoln cost the county more than $30,000.00, and this they have failed to do.

III. The complaint also alleges, fraud and misrepresentation in procurring signatures to the petition to the county Commissioners calling for the county seat election, also that the election was called without registration, and further that there was fraud in the conduct of the election. While it was only shown that about sixty persons were induced by fraud and misrepresentation to sign the petition, leaving more than the requisite number of bona fide signatures, and while it was shown that a registration could not be had under the law calling for the election, and that the general registration law does not apply to special elections of this kind, and while only one vote was shown to have been fraudulently cast, and that

in favor of retaining the county seat in the town of Lincoln, yet I am of the opinion that these questions are none of them to be raised by a suit of this kind.

The overwhelming authority seems to be, to the effect, that a Court of equity cannot inquire into the legality of a county seat election, in the absence of any statutory authority, or injoin the removal of a county seat or the carrying the result of such election into effect upon the complaint of a tax payer, although such complaint alleges fraud, and for that reason I believe the court was without jurisdiction in this case, and that the law being valid, the other allegations set up in the complaint should have been stri-ken. See 10 Am. Eng. Wncy. of Law, 2nd Edition, 816; Parmeter vs. Burne, 35 Pac. 586; Hipp v. Charlevoix Co., 62 Mich. 456; and other caces cited.

(Sgd.) MERRITT C. MECHEM, *Judge.*

29 And thereafter on the said 9th day of June, A. D., 1910, the said Court filed and entered final judgment in said cause, which is in the words and figures following to-wit:—

TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

In the District Court.

Civil Action No. 1928.

S. T. GRAY et al.
vs.
THE BOARD OF COUNTY COMMISSIONERS et al.

This cause coming on to be heard for final hearing on this the 6th day of June, A. D., 1910, and the Court after hearing the testimony in this cause and the argument of counsel, and being fully advised in the premises,

It is by the Court ordered, adjudged and decreed that the injunction heretofore issued in this cause be, and the same is hereby dissolved, and that the plaintiff's complaint herein be dismissed at their costs.

(Sgd.) MERRITT C. MECHEM,
Associate Justice, Judge, etc.

And thereafter, on the 13th day of July, 1910, the said plaintiffs filed in the said court their motion for an Appeal to the Sipreme Court of the Territory of New Mexico which is in the words and figures following, towit:—

In the District Court of the Sixth Judicial District of the Territory of New Mexico within and for the County of Lincoln.

No. 1928.

S. T. GRAY and ROBERT BRADY, Plaintiffs,

vs.

ROBERT H. TAYLOR, —— WHITE, alias SALLIE WHITE, Successor in Office to Charles W. Wingfield, Deceased, and Romaldo Duran, the Board of County Commissioners of Lincoln County, Territory of New Mexico, and T. W. Watson, Treasurer and ex-Officio Collector of Lincoln County, Territory of New Mexico, and J. G. Riggle, Probate Clerk of Lincoln County, New Mexico, Defendants.

Now come the plaintiffs in the above styled cause by T. B. Catron, and C. B. Barber, their attorneys of record, and show to the court now here, that said plaintiffs are aggrieved by the decision of the Court rendered against them, in said cause, by Judge Merritt C. Mechem, at his Chambers in the town of Socorro, N. M. on the sixth day of June A. D., 1910, and that said plaintiffs desire to appeal from said decision to the Supreme Court of the Territory of New Mexico.

Wherefore the said plaintiffs now move the court to grant them an appeal from the decision of the court rendered as aforesaid, to the Supreme Court of the Territory of New Mexico.

(Sgd.) T. B. CATRON.
(Sgd.) G. B. BARBER.

To Hewitt & Hudspeth, Attorneys for Defendants, White Oaks, N. M.:

Please take notice that on account of there being no presiding Judge of the 6th Judicial District, now present in this Territory, we will call up for hearing and determination, the foregoing motion, before Judge Mechem, at his Chambers in the City of Santa Fe, N. M. on the 21st day of July, 1910, or as soon thereafter as a hearing can be obtained.

Dated Lincoln, N. M. July 9th, 1910.

(Sgd.) G. B. BARBER,
(Sgd.) T. B. CATRON,
Attorneys for Plaintiffs.

And thereafter, on the 20th day of July, 1910, the Court granted said motion and allowed said appeal to the Supreme Court, which is in the words and figures following to-wit:

In the District Court of the Sixth Judicial District of the Territory of New Mexico Within and for the County of Lincoln.

No. 1928.

S. T. GRAY and ROBERT BRADY, Plaintiffs,

vs.

ROBERT H. TAYLOR, —— WHITE, alias SALLIE WHITE, Successor in Office of Charles W. Wingfield, Deceased, and Romaldo Duran; the Board of County Commissioners of Lincoln County, Territory of New Mexico, and T. W. Watson, Treasurer and ex-
31 Officio Collector of Lincoln County, New Mexico; and J. G. Riggle, Probate Clerk of Lincoln County, New Mexico, Defendants.

This cause coming on to be heard this 20th day of July, A. D. 1910, upon plaintiffs' motion filed herein praying for an appeal to be granted plaintiffs in this cause from the decision of the Court rendered herein on the 6th day of June, A. D., 1910, to the Supreme Court of the Territory of New Mexico, and the Court having considered said motion and being fully advised in the premises doth grant said appeal as prayed for in said motion. Defendants by their attorneys of record having consented to this appeal, and being present at the hearing.

Done at Chambers, in the City of Santa Fe, on the 20th day of July, A. D., 1910.

(Sgd.) MERRITT C. MECHEM, *Judge, etc.*

And afterwards on towit; *on* the 18th day of August, A. D., 1910 there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, an assignment of errors in the above entitled cause, which said assignment of errors was and is in the following words and figures towit:—

In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1910.

S. T. GRAY and ROBERT BRADY, Plaintiffs and Appellants,

vs.

ROBERT H. TAYLOR, CHARLES W. WINGFIELD, and ROMALDO DURAN, the Board of County Commissioners of Lincoln County, Territory of New Mexico, and T. W. Watson, Treasurer and ex-Officio Collector of Lincoln County, Territory of New Mexico, and J. G. Riggle, Probate Clerk of Lincoln County, and Ben Batzhel, Defendants and Appellees.

Assignment of Errors.

1. The Court erred in not finding that Council Bill No. 86 had not been lawfully enacted.
32 2. In not findind that the alleged election had been legally held.

3. In not finding that the alleged Chapter 80 of the laws of 1909 was either special or local in contravention of the Springer Act, and null and void.

4. In not finding that there was no evidence that the enrolled Council Bill No. 86, claimed to be Chapter 80 of the laws of 1909, had not been signed by the Speaker of the House and the President of the Council, and therefore had not become a law.

5. In not finding that Council Bill No. 86 never became a law, because it was never approved by the Governor.

5½. The Court erred in not finding that there is no evidence that Council Bill No. 86 was presented to the Governor three full days before the session adjourned so as to make it become a law under the Governor's signature.

6. The court erred in not finding that there never was any petition signed by a number of qualified voters of Lincoln County equal to one-half of the votes cast at the last preceding general election asking that the county seat of Lincoln County be changed to Carrizozo, and that therefore the said election was illegal.

7. The Court erred in not finding that the petition acted on by the Board of County Commissioners, in regard to the election, was not according to law, nor as provided by law.

7½. The Court erred in not finding that the petition which was presented to the Board was not such a petition as the law provided should be made, but was different therefrom, and was one calculated to deceive and mislead the signers thereof.

8. The Court erred in not finding that the ballots which were directed to be voted were calculated to deceive and mislead the voters and cause them to vote in favor of Carrizozo instead of against it.

9. The Court erred in not finding that the ballot which was required by law and by order of the County Board to be voted was void for want of definiteness and clearness to the voters sufficiently to appraise them of their rights and how they should vote.

33

10. The Court erred in not finding that the ballot, which was required to be voted, was one calculated to induce votes to favor Carrizozo rather than oppose it, and that under it a voter could not understand his right or the effect of his vote if he wished to vote against the proposition.

11. The Court erred in not finding that fraud was practiced in securing signatures to the petition to such an extent as to infect and render vicious and illegal the whole petition and make it void.

12. The Court erred in not finding that there was such an amount of illegal votes cast at such election as to taint the whole election with fraud and render it void.

13. The Court erred in not finding that the election was void for want of any registration of the names of the legal voters and because the same was held without any registration, as registration was required by law for all elections.

14. The Court erred in not finding that the County of Lincoln had, at the time said alleged election was held, a court house and jail,

the original construction of which cost more than $30,000.00 as shown by the record of the Board of County Commissioners.

15. The Court erred in not finding that said election was void because the sum of $40,000.00 was not depisited, as required by law to be used in the construction of a court house and jail at Carrizozo if a majority of the qualified voters were in favor of that place in said election.

16. The Court erred in rendering judgment in favor of defendants and against the plaintiffs.

17. The Court erred in dismissing the complaint and in not rendering judgment in favor of plaintiffs in accordance with the prayer of their complaint.

18. The Court erred in divers and sundry other respects as
34 will appear from an inspection of the record and proceedings in said cause.

(S'g'd) T. B. CATRON,
GEO. B. BARBER,
Attorneys for Appellants.

And Afterwards, on to-wit, at a regular term of the Supreme Court of the Territory of New Mexico, begun and held at Santa Fe, the seat of Government, on the first Wednesdat after the first Monday in January, A. D., 1910, on the thirteenth day of the said regular term, the same being Friday, August 26th A. D., 1910 the following among other proceedings were had and entered of record to wit:

No. 1350.

S. T. GRAY et al., Appellants,
vs.
ROBERT H. TAYLOR et al., Appellees.

Appeal from District Court, Lincoln County.

This cause coming on for hearing upon the transcript of record, assignment of errors and briefs of counsel, is argued by T. B. Catron, Esq., for Appellants, and John Y. Hewitt, Esq., and A. H. Hudspeth, Esq. for Appellees and submitted to the court, and the court not being sufficiently advised in the premises takes the same under advisement.

And Afterwards, on to-wit, *on* the twenty-fourth day of the said regular term, the same being Thursday, September 1st, A. D., 1910, the following among other proceedings were had and entered of record, to wit:

No. 1350.

S. T. GRAY et al., Appellants,
vs.
ROBERT H. TAYLOR et al., Appellees.

35 Appeal from District Court, Lincoln County.

This cause having been argued by counsel, submitted to and taken under advisement by the court upon a former day of the present term, and the court being now sufficiently advised in the premises announces its decision by Associate Justice Baker, Associate Justice Abbott concurring, Chief Justice Pope and Associate Justice Wright concurring especially, affirming the judgment of the court below, for reasons stated in the opinion of the court on file: It is therefore considered and adjudged by the court that the judgment of the District Court in and for the County of Lincoln, whence this cause came into this court, be and the same hereby is affirmed, and that in accordance therewith, it is considered and adjudged by the court that the injunction heretofore issued in this cause be, and the same hereby is dissolved, and that the plaintiffs' complaint herein be dismissed at their costs.

And Afterwards, on to wit, *on* the tenth day of September, A. D., 1911, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, a motion for a rehearing and to set aside the judgment, which said motion to set aside the Judgment and Grant a Rehearing, was and is in the following words and figures *following* to wit:

In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1910.

No. 1350.

S. T. GRAY and ROBERT BRADY, Appellants,
vs.
ROBERT H. TAYLOR et al., Appellees.

Appeal from District Court, Lincoln County.

Come the appellants in the above entitled cause and move the court to set aside the judgment entered in said cause and grant
36 a rehearing therein for the following reasons.

(1) The court gave a wrong interpretation to the effect of the Journals — and House, although the journals which were not legally established by any lawful proof so as to authorize them to be introduced in evidence, yet as introduced in evidence they may have shown the passage of the act, but nowhere did they shew that the act

was presented to the Governor at any time, much less more than three days before they adjourned.

(2) The court in holding that a journal may be judicially noticed overlooked the fact that that referred to the original journal and not an unauthorized printed copy, and that what is meant by judicial notice of the journal, is, that the original when offered in evidence would not require any proof to establish it and does not refer to the facts contained in the journal independent of the introduction of the journal in evidence. There is no law requiring a journal to be kept, as in Wisconsin, and in the absence of any law or what is equivalent to a law requiring a journal to be kept, it would be necessary to prove that the journal offered in evidence was the original or an authorized copy of it, which was not shown.

(3) The court erred in not holding that the message of the Governor, sent on the last day of the session to the Council, stating that he had allowed the act to become a law by limitation, did not establish the fact that the bill had been presented to him more than three days before the adjournment of the Legislature; and also in holding that because other bills or acts showed that they, as printed, had become a law by limitations; that such fact justified the court in assuming that the Governor had received the act more than three days prior to his message, when it does not appear affirmatively, anywhere, that he did receive it three days before the time of adjournment, and it does appear affirmatively that he did not approve or sign it. The court evidently failed to consider all the facts and law bearing on said point.

(4) The court ———— an equal division of the court, the meaning of the petition upon which the Board of County
37 Commissioners acted in calling the election. The petition did not ask, as the law required, that the county seat be removed, but referred to the suggestion that probably had proposed that it be removed, and the petition merely asked that the proposition be submitted to the voters. Those who signed the petition may have done so with a view of cutting off any election for ten years and keeping it at its then located place believing that they had a majority to do so. The petition only asked for an election to vote on a proposition and not that the county seat be removed There can be no difference in law between a petition to locate or relocate a county seat and one to move the county seat: that is, when construed in connection with the two cases cited from Florida. The petition must conform to the law in both cases.

(5) The court evidently was mistaken and erred in saying "In the case at bar the desire to remove the county seat by the signers is apparent." It is very difficult in examining the petition to see where it is apparent. There is not a word in it that expresses a desire or wish to have it removed. It is just as easy to assume that the signers to that petition wished to dispose of the mooded question of the removal of the County seat while they had a majority to retain it at Lincoln as it is to assume that it appears they wanted it to be changed to Carrizozo. If the law provided that bonds of a county should be issued upon a petition of a certain number of persons ask-

ing that the bonds be issued, it not being required that the petition shall ask for the holding of an election, and there being a proposition mooded among the people that it was desirable to issue bonds for a given purpose and that such proposition could not be submitted oft-ner than once in ten years, if in view of said facts there were parties who were in favor of the parties who were opposed to the issue of such bonds, and a petition should be gotten up not asking for the issue of the bonds but asking for an election to vote on the proposition whether the bonds should be issued, could anyone claim that the persons who signed said petition favored the issue of the bonds. Is not it equally consistent with reason that they wanted the question voted on so they could vote it down, although
38 they might be mistaken as to the legality of their proceedings? It certainly is a stretch of judicial acumen to say that the desire to remove the county seat to Carrizozo by the signers of that petition is apparent. Which words make it apparent? Where is the expression that manifests the desire? Does the desire go any further than asking that an election be held to vote for or against the proposition? And is it not as apparent that the signers of the petition desirec to vote against the proposition to the same extent that it is apparent that they desired to vote for it? We insist that this interpretation of the petition is radically wrong.

(6) The court erred and misinterpreted the statute when it says "by the terms of the statute it is impossoble to have registration within the time following the petition and the election." The court failed to recognize the fact that it was the duty of the Board to call the election within the time and at a time within fhich the registration could be had according to law: that it is the policy of the law to have registration of voters at all elections, and that was its requirement and there was no change in that law so far as it applied to special elections; That registration was required and is made necessary to avoid fraud in voting; that it was within the power of the Board to have fixed the election to be held at a distance of two months from the date of the petition. And in construing the statute. it must be construed in connection with the statute on registration, they being in para materia. The principle that both statutes must be construed together and both given force and effect, is laid down in "in the matter of Watts, 1 N. M. 541-2," which held, in substance, that where there are two statutes regulating a certain course to be taken, passed at different times, and each making different requirements necessary, both must be complied with if it was possible to do so. The Territorial Legislature in authorizing that election, if the act was valid, gave time for the registration to be had, and if the election had been called as it should have been, sixty days
39 after the receipt of the petition, both requirements could have been had. We insist the Board was not authorized or justified in calling the election at a shorter period than sixty days. If the statute had required the election to be held, absolutely, at a period less than sixty days that would have been a repeal of the registration law pro tanto, but the statute did not do so. In the original section 630 Comp. Laws the statute did provide that the election

should be held within six weeks. The amendments changed it to two months. There must have been a reason for that and that reason certainly was for no other purpose than to require them to comply with the registration law. If not, why was the change made? The amendment of the statute says: "At a special election to be called for that purpose at any time within two months from the date of said petition."

The court will notice by reading the amended statute that it does not provide that the election shall be held at any time within two months, but only that it should be called. What is the process of calling a special election? Is it not a mere act or proclamation notifying the people that an election will be held? The time of holding the election or the act of holding the election is no part of the call, but the call is what has to be done prior to holding the election. There is no proposition in the law that the Board shall act immediately on the presentation of the petition; They could do it at any time. If the time of the presentation of the petition was less than a year from the general election they could make the order directing the vote on the proposition. It it was greater than a year, then at any time within sixty days they could call the election, but the statute does not say they must call the election to be held within sixty days. The time of holding the election could have been fixed by them at any time so that they gave time for registration and complying with other election requirements. The language of the court, that by terms of the statute it is impossible to have revision within the time following the petition and election, is certainly inconsiderate and not according to the fair construction of the statute.

(7) The court erred in holding that the finding of the Court Below as to the original cost of the old building was less than $30,000.00 was correct, because the evidence shows that all except a few hundred dollars which went into the building, leaving more than $30,000.00 for the original cost, was in changing or repa-ring the old building so as to make it suitable for a court house and jail and not simple to take the place of something which formerly existed and had been used as a part of the court house and jail when in use as such. We insist that a revision on that point ought to reach a different conclusion.

(8) The court erred as to the question of the law being special legislation or local legislation on account of the decision in 9 N. M. 565. The court in that case had a different law, which was, the county seat could not be changed to any place unless it had a greater population than that of the one where the county seat existed, and that it must be twenty miles distant. It was sufficient to sustain that case to say that the county seat might be changed and could only be changed to a place having a larger population; that classified the matter sufficiently to make it legal in that case, and that was the turning point in it. The distance in that case was greater than twenty miles, and Raton had a larger population than Springer. But we insist that the reasons given in that case, as to the twenty mile limit, are very unsatisfactory, very perfunctory and are in no

manner sufficient, because there could be no difference as to the effect on the people of the county generally (and that effect to be favorable) whether the place was ten miles or nineteen miles and a half, or twenty miles and a quarter, all such towns must be similarly situated and affected by the same general proposition. There is nothing suggested why there would be any more danger of constant contests over a town nineteen and three quarter miles from the county seat than over twenty miles away. We insist that the statute is special and local and should have been so construed.

41 (9) The court further erred in upholding the law and the order of the court prescribing the form of the ballot. We insist that the form of that ballot was absolutely misleading and did not point out specifically to the voter what proposition he should vote upon, or how he should vote in case he did not want to vote for Carrizozo, and that in view of that fact many voters may have voted for Carrizozo because they saw no other way to vote, and many may have refrained from voting because they saw no way to vote against Carrizozo. Neither the law nor the order makes any proposition to the voter to vote for any other place or to vote directly against Carrizozo; and we say that the court should have held both the law and order void as being incapable of being intelligently acted upon by the voter and as leaving him in doubt as to how he should vote.

In view of the fact that the court was equally divided upon the sufficiency of the petition and the affirmance of the action of the court below did not come from a majority of the court, we request and insist that the court grant a rehearing and allow a re-argument of the case in order that a full bench or at least five Judges may act upon the same and a clear majority of the court be had on the different propositions.

(Sgd.) GEO. B. BARBER,
T. B. CATRON,
Attorneys for Appellants.

Whish said motion was and is endorsed on the back thereof as follows towit: "No. 1350. In the Supreme Court of the Territory of New Mexico, January Term, A. D., 1910. S. T. Gray and Robert Brady, Appellants, vs. Robert H. Taylor, et al., Appellees, Motion to set aside the Judgment and grant a rehearing. Filed in my Office this Sep. 10, 1910, Jose D. Sena, Clerk. Geo. B. Barber, T. B. Catron, Attorneys for Appellants.

And afterwards, on to-wit at a regular term of the Supreme Court of the Territory of New Mexico, begun and held at Santa Fe, the seat of Government, on the first Wednesday after the first

42 Monday in January A. D., 1911, on the fourth day of the said regular term, the same being Saturday, January 7th, A. D., 1911, the following among other proceedings were had and entered of record as follows towit:

No. 1350.

S. T. GRAY and ROBERT BRADY, Appellants,
vs.
ROBERT H. TAYLOR et al., Appellees.

Appeal from District Court, Lincoln County.

This cause coming on before the court on motion of the appellants herein for a rehearing and the court having had said motion under advisement and being now sufficiently advised in the premises grants the same. It is therefore considered and adjudged by the court that the motion for a rehearing herein be and the same hereby is granted.

It is further ordered by the court that this cause be and the same hereby is set for hearing for January 30th, 1911.

And afterwards, on to-wit *on* the Eleventh day of the said Regular term, the same being Monday January 30th, A. D., 1911, the following among other proceedings were had and entered of record, towit:

No. 1350.

S. T. GRAY and ROBERT BRADY, Appellants,
vs.
ROBERT H. TAYLOR et al., Appellees.

Appeal from District Court, Lincoln County.

This cause coming on for rehearing upon the transcript of record, assignment of errors and briefs of counsel, is argued by T. B. Catron, Esq., for Appellants and John Y. Hewitt, Esq., for Appellees, and submitted to the court and the court not being sufficient-
43 advised in the premises, takes the same under advisement.

And Afterwards, on towit *on* the sixteenth day of the said Regular term, the same being Saturday February 4th A. D., 1911, the following among other proceedings were had and entered of record towit:—

No. 1350.

S. T. GRAY et al., Appellants,
vs.
ROBERT H. TAYLOR et al., Appellees.

Appeal from District Court, Lincoln County.

This cause having been reargued by counsel and resubmitted to and retaken under advisement by the court upon a former day of the present term, and the court being now sufficiently advised in the

premises, announces its decision by Associate Justice Parker, Associate Justices Abbott, and Roberts, concurring, and Chief Justice Pope and Associate Justice Wright, Dissenting, adhering to the judgment of the court as heretofore given, affirming the judgment of the court below, for reasons stated in the opinion of the court on file; It is therefore considered and adjudged by the court that the former decision of this court heretofore had and entered is and the same hereby is adhered to and the judgment of the District Court for the County of Lincoln stands as heretofore affirmed.

And Afterwards, on to wit, at the said regular term of the Supreme Court of the Territory of New Mexico on the Seventeenth day thereof, the same being Wednesday March 1st, A. D. 1911, the following among other proceedings were had and entered of record, following to-wit:

44 No. 1350.

S. T. GRAY and ROBERT BRADY, Appellants,
vs.
ROBERT H. TAYLOR et al., Appellees.

Appeal from District Court, Lincoln County.

Now comes T. B. Catron, Esq., attorney for appellants in the above entitled cause, and moves the court for a statement of facts herein on appeal to the Supreme Court of the United States, and prays an appeal from the judgment of this Court, to the Supreme Court of the United States. It is therefore considered and adjudged by the court that the appellants herein be and they hereby are granted an appeal from the judgment and decision of this court to the Supreme Court of the United States, upon the filing of a good and sufficient supercedeas Bond.

And Afterwards, on to-wit, *on* the twentieth day of the said Regular term, the same being March 4th, A. D., 1911 the following among other proceedings were had and entered towit:

No. 1350.

S. T. GRAY et al., Appellants,
vs.
ROBERT H. TAYLOR et al., Appellees.

Appeal from District Court, Lincoln County.

Now comes T. B. Catron, Esq., attorney for appellants herein and having heretofore prayed an appeal to the Supreme Court of the United States moves the court for a supersedeas and to fix the amount of said bond on supersedeas, and the court being sufficiently advised in the premises, fixes the said Bond in the sum of Five thousand dollars, conditioned as required by law.

And afterwards, on towit, *on* the said Twentieth day of the said regular term, the same being the 4th day of March, there was filed and entered of record a statement of facts by the court in the
45 above entitled cause, on appeal, which said statement of facts by the court were and are in the following words and figures *following* to wit.

In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1911.

No. 1350.

S. T. GRAY and ROBERT BRADY, Appellants,
vs.
ROBERT H. BRADY et al., Appellees.

Appeal from District Court, Lincoln County.

On motion of the plaintiffs and appellants, in the above entitled cause, for this court to make a statement of the facts of the case in the matter of a special verdict, this Supreme Court of the Territory of New Mexico makes the following statement of the fact*w* in the above entitled cause in the nature of a special verdict to be used on appeal instead of the evidence at large in the Supreme Court of the United States.

"The original copy of Chapter 80, as printed in the official copy of the laws of the New Mexico Legislature of 1909, is the original council bill No. 86, as it passed both Houses of the Legislature, and contains the original endorsements thereon made by the Chief Clerk of each House of the Legislature, and is in words and figures following, to-wit:

"An Act Relating to Changing of County Seats.

"Be it enacted by the Legislative Assembly of the Territory of New Mexico:—

SECTION 1. That Chapter 119 of the Session Laws of the Legislative assembly for the year 1905, approved March 16th 1905, be, and the same is hereby repealed.

SECTION 2. That Section 630 of the Compiled Laws of the Territory of New Mexico of 1897, be, and the same is, hereby amended so as to read as follows:—
46 SEC. 630. Whenever the citizens of any County in this Territory shall present a petition to the Board of County Commissioners, signed by qualified electors of said County, equal in number to at least one-half of the legal votes cast at the last preceding general election in said County, asking for the removal of the County seat of said county to some other designated place, which petition shall be duly recorded in the records of said county, said board shall make an order directing that the proposition to remove the county seat to the place named in the petition, be submitted to

a vote of the qualified electors of said County at the next general election, if the same is to occur within one year of the time of the presenting of said petition, otherwise at a special election to be called for that purpose at any time within two months of the date of presenting said petition: Provided: That whenever it is proposed to remove a county seat of any County which has public buildings consisting of a court house and jail, the original construction of which cost said county more than the sum of Thirty Thousand Dollars, ($30,000) such cost to be ascertained from the records of the Board of County Commissioners of said County, then before said Board of County Commissioners shall make such order so submitting such proposition to remove the county seat, to the qualified voters of said county, shall require from the petitioners or the persons interested in the removal of said county seat a deposit of Forty Thousand Dollars in money, which said deposit shall be placed in the Treasury of said County, which said sum of money when so placed in said Treasury shall be used in the construction of a court house and jail in the event that the proposition for the removal shall receive a majority of the votes cast at such election, but such deposit shall not be required as a condition precedent of submitting such proposition for the removal of *counties* — which have no court house and jails, the cost to the County of which, as ascertained from the records of said County Commissioners, is less than said sum of Thirty Thou-
sand Dollars ($30,000.00) as aforesaid; but the same shall be
47 required in all cases when it is proposed to remove a county seat from a point situated on a railroad to another point also so situated; provided further;—, that, the City, town, village or place named in the petition to which it is proposed to remove such county seat shall be at least twenty miles distant from the then county seat of said county and said petitioners or persons interested in the removal of said county seat shall cause to be conveyed to said county, by a good and perfect title, in the event that the proposition for the removal shall receive a majority of the votes cast at such election sufficient suitable land to be accepted, if containing as much as three-fourths of an acre for court house, jail and other buildings, for such county, the deed for which shall be filed with and accepted by the Board of County Commissioners before calling said election, which deed to be delivered to the grantor therein named in case said proposition to remove said County seat fails to receive a majority of the votes cast at such election, and that no proposition to remove a county seat from a city, town, village or place situated on a railroad, to one not so situated, shall be entertained or voted upon, and that no vote shall be ordered on substantially the same proposition more than once in ten years.

SEC. 3. This act shall be in force and effect from and after its passage, and all acts and parts of acts in conflict herewith are hereby repealed."

"That said Act was introduced in the Legislature in the council thereof on the 17th day of February, 1909, as a bill entitled "An

Act relating to the changing of county seats," and has endorsed thereon the following: in words and figures, to-wit:

"Chap. 80. 38th Legislative Assembly. Council Bill No. 86.
Introduced by Navarro, 17th day of Feb., 1909. An Act entitled an Act Relating to the changing of County seats. Read first time; read second time; ordered printed and referred to committee on Co. and Co. lines. Delivered to translator, —— —, 1909. Delivered to printer 2/17/09. Returned by Printer Feb. 23rd, 1909.
48 Reported to Council by Committee on the 24th day of Feb., 1909. With recommendation that it be amended, report and amendments adopted and bill taken up for consideration, read third time preparatory to its passage, placed on its passage and duly passed.

(Sgd.) WILLIAM F. BROGAN,
Chief Clerk Council.

3/11 Read.

Read third time in preparation to its passage, placed upon its passage and duly passed.

(Sgd.) E. H. SALAZAR,
Chief Clerk House.

Received from H. as duly passed and properly enrolled and engrossed.

(Sgd.) WILLIAM F. BROGAN,
Chief Clerk Council.

Com. on Finance.
3/3 Read first and second time by title and referred to the Committee on finance.
Del. to Com. 3/4—

Filed in office of Secretary of New Mexico, Mar. 18th, 1909, 3 P. M.

(Sgd.) NATHAN FAFFA, *Secretary.*

Compared C. F. K. to J. O."

The printed journals of the Council and House of Representatives of that Legislature showed that the said Bill numbered 86 passed through the said council and the House, as indicated by said endorsements; but they do not show that it was ever enrolled or ever signed by the Speaker of the House or the President of the Council. The original bill Number 86 as it passed the House and Council, being the same document which was used and filed in the office of the Secretary of the Territory, at 3 o'clock P. M. March 18th, 1909, and is the only document filed in said office representing Chapter 80 of the Session Laws of that Legislative Assembly.

The said bill filed as said act does not have the signature or approval of the Governor affixed thereto, nor does it have the signature of the Speaker of the House or the President of the Council affixed or attached thereto.

The Council and House of Representatives of the said
49 Legislature of 1909 each adopted rules in regard to the transaction of business before them. These rules were introduced in evidence. Rule 9 of the council provides as follows:

"9. All acts, addresses and joint resolutions shall be signed by the President."

Rule 5 of the House of representatives provides as follows:

"5. The Speaker shall sign all bills passed by the House and certify the passage of all bills that may be passed over the Governor's veto, with the date of the passage."

There is no evidence showing when Council Bill 86 reached the hands of the Governor, but there appears in the journal of the Council of that Legislature a message from the Governor which was received and entered in that journal on the 18th day of March, 1909, in the following words and figures:

"*Message No.* 51.

TERRITORY OF NEW MEXICO,
OFFICE OF THE EXECUTIVE,
SANTA FE, NEW MEXICO, *March 18th*, 1909.

Honorable Charles A. Spiess, President, and Members of the Council, 38th Legislative Assembly of New Mexico.

GENTLEMEN: I have the honor to inform you that I have this day allowed Council Bill No. 86, 'An Act entitled an act relating to the changing of County seats' to become a law by limitations. I am, gentlemen.

Respectfully yours,
(Sgd.) GEORGE CURRY,
Governor of New Mexico."

This message is the only evidence that said Council bill No. 86 ever reached the hands of the Governor.

On July 6th, 1909, a petition was presented to the Board of County Commissioners of Lincoln County in the words and figures following, towit:

"*County Seat Petition.*

To the Honorable Board of County Commissioners of Lincoln County, Territory of New Mexico:

We, the undersigned qualified electors of the County of Lincoln in the Territory of New Mexico, respectfully petition you to call an election and submit to a vote of the qualified electors of said Lincoln County, the proposition to remove the county seat of said
50 Lincoln County, to Carrizozo a town situated on the El Paso & Southwestern Railroad."

Said petition was signed by qualified electors of Lincoln County, equal in number to at least one-half of the legal votes cast at the last

preceding general election in the said county; that solely on and pursuant to said petition and its prayers, and for no other reason, the said Board by a majority thereof made an order on the 7th day of July, 1909, calling an election, as prayed for in said petition, reciting that a proper piece of land in the town of Carrizozo had been conveyed to the said county for said court house, which was accepted, they then by said order provided, in words and figures following:

"Now, therefore, in pursuance of the prayers in said petition and in accordance with the facts so found, and with the statutes in such case made and provided, it is hereby ordered and directed that an election of the qualified electors be held in each of the precincts of said Lincoln County on the 17th day of August, 1909, and at said election the tickets voted shall contain "For County Seat," with the name of the place for which the voter desires to cast his ballot, either printed or written thereon; such ballot shall be canvassed as an election for county officers and the returns of such election shall be certified by the Probate Clerk to the Territorial Secretary, together with a certified copy of the order of the County Commissioners and a sworn certificate of the publication thereof to be filed in the office of the Secretary."

No registration of voters to vote at said election was ordered to be had or had prior to the said election. An election, as provided for by said call, was held on the 17th day of August, 1909, in said county, without any of the voters voting at said election having been registered therefor; at which election a total of 1513 votes were cast 900 being for Carrizozo and 613 for Lincoln, being a majority of 287 votes for Carrizozo. After the declaration of the result of said vote, and election and before the commencement of this suit, said Board of County Commissioners made an order for the issue
51 and sale of $28,000 of bonds of the said County of Lincoln for the purpose of raising money to construct a new court house at Carrizozo, as the county seat of said county, which were issued and disposed of at par and the money arising therefrom placed in the treasury of the county. The said Board of County Commissioners thereafter and before the commencement of this suit secured buildings at the said town of Carrizozo which they deemed convenient, and thereafter the courts of said county, including the district courts, Probate Courts, and Board of County Commissioners were held therein. And after the said election and before the commencement of this suit, the said Board of County Commissioners entered into a contract with the defendant, Ben Betzhel, to construct the said court house and jail for said county at Carrizozo, who immediately entered upon the performance of said contract and has partially constructed the said court house and jail at Carrizozo, and the said Board of County Commissioners have paid out to him a considerable portion of the amount of the contract price for the construction of the said court house and jail, but not all of it. And that the said Board of County Commissioners gave out and declare that it is their purpose to go on with the construction of the said court house and jail and complete the same at Carrizozo and pay the

said Ben Betzhel therefor the full amount of his contract price therefor.

The foregoing statement of facts has been agreed upon as a correct statement of facts to be found by the Supreme Court on the motion for special verdict, for use on appeal in the Supreme Court of the United States.

(Sgd.) GEO. B. BARGER,
T. B. CATRON,
Attorneys for Plaintiffs.

(Sgd.) HEWITT & HUDSPETH,
Attorneys for Defendants.

52 And Afterwards, on towit, on the 22nd day of April, A. D., 1911, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, a supersedeas Bond which said supersedeas Bond was and is in the following words and figures following to-wit:—

Know all men by these presents, That we, S. T. Gray and Robert Brady, as principals, and The United States Fidelity and Guaranty Company of Baltimore, Md., as their surety, are held and firmly bound unto Robert H. Taylor, Charles W. Wingfield and Romaldo Duran, The Board of County Commissioners of Lincoln County, Territory of New Mexico, and T. W. Watson Treasurer and ex-officio Collector of Lincoln county, Territory of New Mexico, and J. G. Riggle, Probate Clerk of said Lincoln County, Territory aforesaid, and Ben Betshol, in the full and just sum of Five Thousand Dollars to be paid to the said Robert H. Taylor, Charles W. Wingfield and Romaldo Duran, The Board of County Commissioners of Lincoln County, Territory of New Mexico, and T. W. Watson, Treasurer and ex-officio Collector of Lincoln County, Territory of New Mexico and J. G. Riggle, Probate Clerk of said Lincoln County, Territory of New Mexico, and said Ben Betzhel, defendants, their successors in office and their heirs, executors and administrators, to which payment well and truly to be made we bind ourselves, our successors, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this fourteenth day of April in the year of our Lord one Thousand nine hundred and eleven.

Whereas, lately at the January term of the Supreme Court of the Territory of New Mexico, in a suit depending in said Court between S. T. Gray and Robert Brady, the plaintiffs therein, and Robert H. Taylor, Charles W. Wingfield, and Romaldo Duran, The Board of County Commissioners of Lincoln County, Territory of New Mexico, and T. W. Watson, Treasurer and ex-officio Collector of Lincoln County, Territory of New Mexico, and J. G. Riggle, Probate
53 Clerk of Lincoln County, and Ben Betzhel, the defendants therein, judgment was rendered against the said plaintiffs S. T. Gray and Robert Brady, said plaintiffs have obtained and taken an appeal from the said Supreme Court of the Territory of New Mexico to the Supreme Court of the United States to reverse the

judgment in the aforesaid suit, and a citation directed to the said defendants in said suit citing and admonishing them to be and appear in the Supreme Court of the United States, in said cause, sixty days from and after the date of said citation, has been issued and served upon them.

Now the condition of the above obligation is such that if said S. T. Gray and Robert Brady shall prosecute said appeal to effect and answer all damages and costs, if they fail to make good their said plea and appeal, then the above obligation to be void, otherwise to remain in full force and virtue.

(Sgd.) S. T. GRAY. [SEAL.]
ROB'T BRADY. [SEAL.]
THE UNITED STATES FIDELITY
AND GUARANTY COMPANY, [SEAL.]
By C. A. BISHOP AND
A. B. RENEHAN, [SEAL.]
Its Attorneys in Fact. [SEAL.]

TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

Be it remembered that before me the undersigned authority on this the 14th day of April, A. D., 1911, personally appeared S. T. Gray and Robert Brady, to me known to be the persons described in and who executed the foregoing instrument as principals therein, and they acknowledged that they executed the same as their free act and deed for the uses and purposes therein set forth.

In Witness whereof, I have hereunto set my hand and official seal the day and year last above written in this certificate.

(Sgd.) J. G. RIGGLE,
[SEAL.] *Probate Court.*

54 TERRITORY OF NEW MEXICO,
County of Santa Fe, ss:

On this 19th day of April, A. D., 1911, before me appeared C. A. Bishop and A. B. Renehan, to me personally known, who, being by me duly sworn did say that they are the Attorneys-in-fact of The United States Fidelity and Guaranty Company of Baltimore, State of Maryland, a corporation organized under the laws of the State of Maryland, and doing business by permit under the laws of New Mexico, and that the seal affixed to the above and foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said C. A. Bishop and A. B. Renehan acknowledged said instrument to be the free act and deed of said corporation.

(Sgd.) THE UNITED STATES FIDELITY AND
GUARANTY COMPANY,
By C. A. BISHOP &
A. B. RENEHAN, *Its Attorney-in-Fact.*

Acknowledged, subscribed and sworn to before me this 19th day of April, A. D., 1911.

(Sgd.) FRANK J. LEVAN,
Notary Public.

My Commission expires Sept. 19, 1914.

Which said Bond was and is endorsed on the back thereof in the following words and figures towit:—"No. 1350. In the Supreme Court of the Territory of New Mexico. S. T. Gray, et al.? Appellants, vs. Board of County Commissioners, Lincoln County, Appellees. Appellant's Bond on appeal to Supreme Court of the United States. 'Examined and approved by me this 21st day of April, 1911. E. R. Wright, District Judge.' T. B. Catron, Santa Fe, New Mexico; Geo. B. Barber, Lincoln, N. M., Attorneys for Appellants. Filed in my office this 22nd day of April, 1911. Jose D. Sena, Clerk."

55 And Heretofore, on to-wit, *on* the first day of September, A. D., 1911, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, an opinion by the court, which said opinion by the court was and is in the following words and figures following towit:

In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1910.

No. 1350.

S. T. GRAY et al., Plaintiffs,
vs.
ROBERT H. TAYLOR et als., Defendants.

T. B. Catron and Geo. B. Barber, Attorneys for Plaintiffs.
Hewitt & Hudpeth, Attorneys for Appellees.

Opinion of the Court.

PARKER, *J.*:

This is an equitable action brought by plaintiffs as tax prayers of the county of Lincoln, to restrain and enjoin the erection of a court house and jail at Carrizozo in said County, and to enjoin the paying out and expenditure of $28,000 of money in the treasury of the County, proceeds of bonds issued and sold by the Board of County Commissioners for the purpose of erecting a court house and jail at Carrizozo in said county. The action of the Board of said county was based upon Chapter 80 of the laws of 1909 which was initiated in the legislature of 1909 by Council Bill No. 86. Trial was had in the court below which resulted in a denial of the injunction and dismissal of the bill. Appellants make various complaints of the action of the court below.

1st. Counsel for appellants argues against the validity of the act

because it fails to bear the signatures of the presiding officers of the legislative counsel and house as required by the respective rules of each house, and cites Field v. Clark 143 U. S. 671. In that
56 case the specific question presented was whether the journals of the two houses of congress, which contracicted the terms of the act by showing that a certain section of the act, not appearing in the act had in fact the engrossed bill, signed by the presiding officers of each house and the president, found in the archives of the office of the secretary of state, would control the recitals of the journal. The Court held the latter would control. It held that the journals could not contradict the act but did not hold that they might not be read in aid of the act. Counsel also cites Harwood v. Wentworth 162 U. S. 557 in which case the holding was the same.

But the question in this case is whether the journals may be resorted to in aid of the act in order to show that it in fact passed both houses. There is no legislative requirement that any bill shall receive the signature of the respective presiding officers of the two houses. The only requirement is found in a rule adopted separately by each house. The journals of the two houses show the passage of the bill and in such case they may be judicially noticed in aid of the act. McDonald v. State, 80 Wis. 407, Gardner v. Collector, 6 Wall. 499, 7 Ency. Ev. 991, n/18.

Objection to the validity of the act is made on account of *of* the absence of the signature of the Governor and certificate by him of the date when he received the same. The statutory requirement in this regard is found in Sec. 1842, U. S. R. S. which provides:

"That 'Every bill which has passed the Legislative Assembly of any Territory shall, before it becomes a law, be presented to the Governor; if he approves he shall sign it; but if not, he shall return it, with his objections, * * * If any bill is not returned by the Governor within three days, Sundays excluded, after it has been presented to him the same shall be a law in like manner as if he had signed it, unless the legislative assembly by adjournment sine die prevent its return, in which case it shall not be a law:"

It appears from the journals that the act was passed many days before March 18, the last day of the session and the day upon
57 which the governor sent a message to the legislature stating that he had allowed the act to become law by limitation. We have examined the original engrossed bills on file in the office of the secretary of the Territory and find that this was the uniform practice of the governor in regard to acts allowed to become laws by limitation, and on none of them does he show the date of receipt of the act by him. In the absence of any evidence to the contrary we are compelled to assume that the executive acted lawfully and his message will be assumed to imply the receipt by him of the act more than three days prior to the message.

2nd. The contention is made that the petition for the election was not in accordance with the act and that, consequently, the county commissioners had no power to call the election.

The act provides:

"Sec. 2. That Sec. 630 of the Compiled Laws of the Territory of

New Mexico, of 1897, be, and the same is hereby amended so as to read as follows:

'SEC. 630. Whenever the citizens of any county in this Territory shall present a petition to the Board of County Commissioners signed by qualified electors of said county, equal in number to at least one half of the legal votes cast at the last preceding general election in said county, asking for the removal of the county seat of said county, to some other designated place, which petition shall be duly recorded in the records of said county, and said board shall make an order directing that the proposition to remove the county seat to the place named in the petition, be submitted to a vote of the qualified electors of said county at the next general election, if the same is to occur within one year of the time of presenting said petition: Provided, That whenever it is proposed to remove a county seat of any county which has public buildings consisting of a court house and jail, the original construction of which cost said county more than the sum of thirty-thousand ($30,000) dollars such cost to be ascertained from the records of the Board of County Commissioners of said county, then before said Board of Commissioners shall make
58 such order so submitting such proposition to remove the county seat, to the qualified voters of said county, shall require from the petitioners or the persons interested in the removal of said county seat a deposit of forty thousand dollars ($40,000) in money, which said deposit shall be placed in the treasury of said county, which said sum of money when so placed in said treasury shall be used in the construction of a court house and jail in the event that the proposition of the removal shall receive a majority of the votes cast at such election, but such deposit shall not be required as a condition precedent to submitting such proposition for the removal of the counties which have no court house and jails, the cost to the county of which, as ascertained from the records of said county commissioners is less than the said sum of thirty thousand dollars ($30,00-.00) as aforesaid; but the same shall be required in all cases when it is proposed to remove a county seat from a point situated on a railroad to another point also so situated; Provided, further, That the city, town, village or place named in the petition to which it is proposed to remove said county seat shall be at least twenty miles distant from the then county seat of said county and said petitioners or persons interested in the removal of the said county seat shall cause to be conveyed to said county by a good and perfect title, in the event of the proposition for the removal shall receive a majority of the votes cast at such election, sufficient suitable land to be accepted if containing as much as three fourths of an acre for court house, jail and other buildings for such county, the deed for which shall be filed with and accepted by the Board of County Commissioners before calling said election which deed to be re-delivered to the grantor therein named in case said proposition to remove said county seat fail to receive a majority of the votes cast at such election, and that no proposition to remove a county seat from a city, town, village or place, situated on a railroad, to one not so situated shall be

entertained or voted upon, and that no vote shall be ordered on substantially the same proposition more than once in three years."

59 The petition presented to the Board of County Commissioners in this case was as follows:

"County Seat Petition."

"To the Honorable Board of County Commissioners of Lincoln County, Territory of New Mexico:

We, the undersigned, qualified electors of the county of Lincoln, in the Territory of New Mexico, respectfully petition you to call an election and submit to a vote of the qualified electors of said Lincoln County, the proposition to remove the county seat of said Lincoln County *the* Carrizozo, a town situated on the El Paso and Southwestern Railroad."

Counsel urges that this petition does not meet the reqyirements of the statute. He says that this was not a petition to remove the county seat to Carrizozo, but we are unable to agree with the conclusion urged. The proposition was not to submit the question of locating the county seat generally thus calling for signatures of persons who were opposed to as well as in favor of the removal. It presents the specific proposition to remove the county seat to Carrizozo. Thus no signer to the petition, and they were larg-le in excess of the required number, could have been deceived by the petition. Counsel cites Lanier v. Padgett, 18 Fla., 842, and McKinney, v. Meyers 26 Fla. 267. In the first case the statute provided for a petition praying for a change. The petition in that case was "for the purpose of legally locating the court house." The court held properly that the petition was fatally defective because signers might easily have been secured to such a petition who really favored the retention of the county seat at its then location. In the second case the facts were similar and the same decision reached. In this latter case, however, the court uses the significant expression: "If there was in the petition any prayer, or expression of desire, for a change of location of the county site, the bill does not inform us of it." In the case at Bar the desire to remove the county seat by the signers is apparent.

We therefore hold that the petition was sufficient.

60 3rd. Objection is made to the election held at which a large majority of the people of the county determined that the county seat should be located at Carrizozo, on the ground that there was no registration of the voters. By the terms of the statute it is impossible to have registration within the time following the petition and the election. This alone disposes of the contention.

4th. The next contention is that there were frauds in the election but as found by the court below, there was only one illegal vote cast and that was in favor of Lincoln.

5th. The act requires that when public buildings at the old county seat cost by way of original construction $30,000, the petitioners for the new county seat must deposit $40,000 in money for the erection of the new county buildings. The court below found that the orig-

inal cost of the old buildings was less than $30,000 and, as we think, correctly held that subsequent repairs should not be counted.

6th. Counsel urges that the law in question is local and special and that no town within twenty miles of a county seat can ever be a county seat no matter what its qualifications may be. Without reviewing the cases cited it is sufficient to say that this case was well considered in Dodlin v. Kohlhousen 9 M. M. 565 and the act was held not to be special or local by reason of the twenty mile limitation. We *wee* no reason to depart from the holding in that case.

7th. Counsel for appellants complains that the ballots submitted to the people at the election were misleading and not in accordance with the requirements of the provision of Sec. 630 above quoted, which requires that the Board shall make an order directing that the proposition to remove the county seat to the place named in the petition be submitted to a vote of the qualified electors of said county. The ballot provided for in the order was "for County Seat ——"
61 and was in exact accordance with the terms of section 631 C. L., 1897. We see no reason why this ballot was calculated to deceive the voter and there is no evidence that the voters were thereby diceived.

8th. The Point is not raised in this case as to whether this is not a collateral attack upon the location of the county seat. Quere, whether this cause should not be affirmed upon the doctrine announced in Torres vs. Board of County Commissioners decided at this term.

For the reasons stated the judgment of the lower court will be affirmed, and it is so ordered.

(Sgd.) FRANK W. PARKER,
Associate Justice.

We Concur:
IRA A. ABBOTT, *A. J.*

Chief Justice Pope and Associate Justice Wright, concur specially and file separate opinion.

Associate Justice Mechem having tried the cause below and Associate Justice McFie not having heard the argument did not participate in this decision.

And afterwards on towit, *on* the first day of September, there was *wiled* in the office of the Clerk of the Supreme Court of the Territory of New Mexico an Opinion concurring specially in the above opinion in the above entitled cause which said opinion was and is in the following words and figures *following* to wit:—

In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1910.

No. 1350.

S. T. GRAY and ROBERT BRADY, Appellants,
vs.
ROBERT H. TAYLOR et al., Appellees.

Appeal from District Court, Lincoln County.

POPE, *C. J.* (concurring specially):

62 While agreeing with most of the opinion, I do not concur in the conclusion announced in the second paragraph. I am of the opinion that the form of the petition for the election did not comply with the terms of the statute. The latter clearly requires that the petitioners must ask for the removal of the county seat to some other designated place. The petition to my mind asks simply for a vote on the proposition to change. A person opposing Carrizozo but desiring an election simply to settle the question between Carrizozo and Lincoln once for all, might with perfect consistency have signed the petition. Such a petition does not comply with the law and is not a valid initiation of the proceedings for an election. I concur, however in the result upon the ground that the case is within the holding of the case this day announced in Torres vs. Board of County Commissioners, that where the proceeding is practically an attempt to settle a county seat controversy the exclusive method is quo warranto. I am authorized to say that Mr. Justice Wright concurs in these views.

(Sgd.) WILLIAM H. POPE,
Chief Justice.

And Afterwards on the 4th day of February A. D., 1911, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, an opinion on the rehearing of the above entitled cause, which said opinion of the court on the rehearing in the above entitled cause, was and is in the following words and figures *following* towit:

63 In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1911.

No. 1350.

S. T. GRAY et al., Appellants,
vs.
ROBERT H. TAYLOR et al., Appellees.

Appeal from District Court, Lincoln County.

On Rehearing.

This case was decided at the last term by a divided court. A rehearing was had at the present term and the cause resubmitted to all

of the Justices qualified to sit in the case, including Associate Justice Roberts who has since the former hearing come upon the bench.

In the former opinion a quere was thrown out by the court as to whether the procedure by injunction was proper in cases of this kind and calling attention to the case of Torres vs. Board of County Commissioners decided at the last term. In the argument on rehearing counsel on both sides admit that injunction is a proper remedy in a case of this kind, and for that reason the court withdraws the intimation contained in the former opinion and assumes for the purposes of this case, that the procedure is proper.

In the former decision the court divided upon the question as to whether the petition for the election was in accordance with the act under which the county commissioners assumed to proceed. Upon this rehearing the court had carefully re-examined the question and finds no reason to recede from its former position.

All of the other questions in the case were fully examined in a former opinion and have been re-examined by the court on this rehearing and the court adhear-s to its former decision.

FRANK W. PARKER,
Associate Justice.

We Concur:

IRA A. ABBOTT, *A. J.*
CLARENCE J. ROBERTS, *A. J.*

We Dissent:

WILLIAM H. POPE, *C. J.*
EDWARD R. WRIGHT, *A. J.*

Associate Justice Mechem, having tried the case below, McFie not having heard the argument, did not participate in this decision.

64 TERRITORY OF NEW MEXICO,
Supreme Court:

I, Jose D. Sena, Clerk of the Supreme Court of the Territory of New Mexico, do hereby certify that the above and foregoing is a full true and complete copy of the transcript of record, pleadings and opinion in the above enticled cause, as the same appear on file and of record in my office which is hereby trans*crimtes* to the Supreme Court of the United States in accordance with an appeal duly prayed and granted.

Witness my hand and the seal of the Supreme Court of the Territory of New Mexico this the 26th day of May A. D., 1911.

[Seal Supreme Court, Territory of New Mexico.]

JOSÉ D. SENA,
Clerk Supreme Court of N. M.

65 United States of America to Robert H. Taylor, Charles W. Wingfield, and Roumaldo Duran, the Board of County Commissioners of Lincoln County, Territory of New Mexico, and T. W. Watson, Treasurer and ex-Officio Collector of Lincoln County, Territory of New Mexico, and J. G. Rigle, Probate Clerk of Lincoln County, Territory of New Mexico, and Ben Betzhel, Defendants, Greeting:

You are hereby commanded and admonished to be and appear in the Supreme Court of the United States, sixty days from and after the date of this citation, pursuant to an appeal duly prayed for and granted by the Supreme Court of the Territory of New Mexico, wherein S. T. Gray, and Robert Brady, were appellants, and you were appellees, to show cause, if any there be, why the judgment and decree rendered against the said S. T. Gray and Robert Brady appellants as by said appeal mentioned should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States, this the 9th day of March, A. D., 1911.

[Seal Supreme Court, Territory of New Mexico.]

WILLIAM H. POPE,
Chief Justice Supreme Court of N. M.

We, the undersigned attorneys for the defendants and appellees in the cause mentioned in the foregoing citation, hereby acknowledge that we have received this day service of a copy of the said citation above set out which was delivered to us, and we hereby accept and acknowledge due service thereon on us this date as attorneys for the defendants and appellants in said cause. Dated this 17" day of March, A. D. 1911.

HEWITT & HUDSPETH,
Attorneys for Defendants and Appellees,
Rob't H. Taylor et al.

Endorsed on cover: File No. 22,729. New Mexico Territory Supreme Court. Term No. 653. S. T. Gray and Robert Brady, appellants, vs. Robert H. Taylor, Charles W. Wingfield, and Romualdo Duran, the board of county commissioners of Lincoln county, Territory of New Mexico, et al. Filed June 10th, 1911. File No. 22,729.

In the Supreme Court of the United States of America.

No. 653.

S. T. GRAY and ROBERT BRADY, Appellants,

vs.

ROBERT H. TAYLOR, CHARLES W. WINGFIELD, and ROMALDO Duran, The Board of County Commissioners of Lincoln County, Territory of New Mexico, and T. W. Watson, Treasurer and ex-Officio Collector of Lincoln County, Territory of New Mexico, and J. G. Riggle, Probate Clerk of Lincoln County, and Ben Betzhel, Appellees.

Appeal from Supreme Court of New Mexico.

Assignment of Errors.

1. The Court erred in not finding that council bill No. 86 had not been legally enacted.
2. In not finding that the alleged election for a change of the county seat had not been legally held.
3. In not finding that the alleged chapter 80 of the Laws of 1909, even if it had been legally enacted, was either a special or a local law in contravention of the United States Statutes enacted July 30th, 1886, and contained in the first section of Chapter DCCCXVIII of the Statutes at Large, sometimes called the Springer Act, and was therefore null and void.
4. In not finding that there was no evidence that council bill No. 86, which was used in its original shape as the original of chapter 80 of the Laws of 1909 of the New Mexico legislature, had ever been signed by the Speaker of the House and President of the Council of the Legislative Assembly of New Mexico, and therefore had not become a law.
5. In not finding that council bill No. 86, which was used as the original of Chapter 80 of the Laws of 1909 of the New Mexico legislature, never became a law, it never having been approved by the governor.
6. In not finding that there was no evidence that said council bill No. 86, which was used as the original of Chapter 80 of the Laws of 1909 of the New Mexico Legislature, was presented to the governor three full days before that session of the legislature adjourned, and not being signed or approved by the governor became a law without his signature.
7. The Court erred in not finding that there never was any petition signed by a number of qualified voters of Lincoln County, New Mexico, equal to one half of the votes cast at the last preceding general election asking that the county seat of Lincoln County be changed to Carrizozo, and therefore that the said election was illegal and void.

8. The Court erred in not finding that the petition acted upon by the Board of County Commissioners in regard to the said election for a change of the county seat of Lincoln County was not in the terms provided by law nor was it according to the provisions of the law.

9. The Court erred in not finding that the petition which was presented to the board was not such a petition as the law provided should be made in a case of an application to change a county seat, but was different therefrom; and in addition thereto, was calculated to mislead and deceive the signers thereof.

10. The Court erred in not finding that the election in question was void for want of any registration of the names of the legal voters and because said election was held without any registration of the legal voters of said county, as required by law.

11. The Court erred in rendering judgment in favor of the defendants and against the plaintiffs.

12. The court erred in affirming the judgment in favor of the defendants and not rendering judgment in favor of plaintiffs, and in not reversing the judgment of the court below.

13. The Court erred in divers and sundry other respects, as will appear from an inspection of the record and proceedings in said cause.

Wherefore, plaintiffs pray that the judgment and decree of the Supreme Court of New Mexico be reversed in all things, and said cause remanded for proper judgment.

[Endorsed:] 653/22729. 1350. Appeal to the Supreme Court of the United States, from the Supreme Court of the Territory of New Mexico. S. T. Gray and Robert Brady, Appellants, vs. Robert H. Taylor, Charles W. Wingfield, and Romualdo Duran, The Board of County Commissioners, Lincoln County, Territory of New Mexico, et al., Appellees. Assignment of errors. Filed in my office this May 26, 1911. José D. Sena, Clerk.

[Endorsed:] File No. 22,729. Supreme Court U. S., October Term, 1911. Term No. 653. S. T. Gray and Robert Brady, Appellants, vs. Robert H. Taylor et al., etc. Assignment of Errors. Filed November 29, 1911.

S. T. GRAY and ROBERT BRADY, Appellants,

vs.

ROBERT H. TAYLOR, CHARLES W. WINGFIELD, and ROMUALDO Duran, The Board of County Commissioners of Lincoln County, Territory of New Mexico, et al., Appellees.

Appeal to the Supreme Court of the United States from the Supreme Court of the Territory of New Mexico.

TERRITORY OF NEW MEXICO,
County of Santa Fe:

Thomas B. Catron, being duly sworn upon his oath says: that he is one of the attorneys of counsel for the appellants in the above enti-

tled cause; that he is fully conversant with and knows all the facts involved in the matters in dispute in the said cause; that the said suit as commenced in the District Court for the County of Lincoln, Territory of New Mexico, and prosecuted to final judgment therein, and in the Supreme Court of the Territory of New Mexico, involves the right of the Board of County Commissioners of the County of Lincoln, defendants in said cause, to expend the moneys of the County of Lincoln for the purpose of erecting a court house and jail at Carrizozo, in said county; that contracts have been made with the defendant, Ben Betzhel, to pay him $28,000 for the erection and completition of said court house and jail and matters incidental thereto; that the sum of $28,000 was raised and covered into the Treasury of said County by said Board of County Commissioners by the sale of bonds in said county to that amount, and there is still on hand and unexpended that amount thereof on the said court house and jail depending upon the litigation involved in this cause the sum of not less than $15,000 which will be expended under said contracts for the erection of said court house and jail in case the above entitled cause should be determined against the appellants and in favor of the said appellees; that the right to expend said $15,000 is dependent upon the result of this suit, and the amount so in controversy in this suit exceeds the sum of $5,000 exclusive of interest and costs.

THOMAS B. CATRON.

Subscribed and sworn to before me this March 2nd, A. D. 1911. My commission expires October 10, 1911.

[Seal of Tempe Willison, Notary Public, Santa Fe County.]

TEMPE WILLISON,
Notary Public.

[Endorsed:] 653/22729. 1350. Appeal to the Supreme Court of the United States from the Supreme Court of the Territory of New Mexico. S. T. Gray and Robert Brady, Appellants, vs. Robert H. Taylor, Charles W. Wingfield, and Romualdo Duran, The Board of County Commissioners of Lincoln County, Territory of New Mexico, et al., Appellees. Affidavit that the amount in controversy exceeds $5,000.00. Filed in my office, this May 26, 1911. José D. Sena, Clerk.

[Endorsed:] File No. 22,729. Supreme Court U. S., October Term, 1911. Term No. 653. S. T. Gray and Robert Brady, Appellants, vs. Robert H. Taylor et al., etc. Affidavit of value. Filed November 29, 1911.

(22,965)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 889.

THE TERRITORY OF NEW MEXICO, BY ITS ATTORNEY GENERAL, FRANK W. CLANCY, ON THE RELATION OF JACOBO J. ARAGON, APPELLANT,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, NEW MEXICO.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 7, 1912.

1 Be it remembered, that heretofore on the 21st day of August, A. D. 1911, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, a Transcript of Record in a certain cause therein pending, entitled "The Territory of New Mexico by its Attorney General, Frank W. Clancy, on the relation of Jacobo J. Aragon, vs. The Board of County Commissioners of Lincoln County, New Mexico," portions of which said transcript are in words and figures as follows, to-wit:

In the Supreme Court of the Territory of New Mexico, January Term, 1911.

No. 1410.

THE TERRITORY OF NEW MEXICO, by Its Attorney General, FRANK W. CLANCY, on the Relation of JACOBO J. ARAGON, Appellant,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, NEW MEXICO, Appellee.

Appeal from the Sixth Judicial District Court, Lincoln County.

Transcript of Record.

Be it remembered that in the District Court in and for the County of Lincoln certain pleas and pleadings were begun and had therein, in the case of Territory of New Mexico by its Attorney General, Frank W. Clancy, on the relation of Jacobo J. Aragon, vs. The Board of County Commissioners of Lincoln County, New Mexico, in which said cause, on the 24th day of September, A. D. 1910, a verified information was filed in said Court which is in words and figures following, to-wit:

2 In the District Court for the County of Lincoln, Territory of New Mexico.

No. 1976.

TERRITORY OF NEW MEXICO, by Its Attorney General, FRANK W. CLANCY, on the Relation of JACOBO J. ARAGON

vs.

THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, NEW MEXICO.

To the Honorable Edward R. Wright, Associate Justice of the Supreme Court of the Territory of New Mexico and Judge of the Sixth Judicial District Court thereof, Sitting in the County of Lincoln:

The Territory of New Mexico, by its Attorney General, on the relation of Jacobo J. Aragon, gives the Court to understand and be

informed that Jacobo J. Aragon is a resident in the town of Lincoln, in the County of Lincoln, and Territory of New Mexico, is the owner of a large amount of real and personal property in the said County of Lincoln and is a taxpayer in a large amount of taxes in said county both to the County and Territory of New Mexico; that for a long time heretofore said Board of County Commissioners of Lincoln County, in the Territory of New Mexico, has used and does now use without any lawful warrant, grant or authority the following liberties, privileges and franchises, to-wit: that of changing and establishing the county seat of said Lincoln County from the town of Lincoln to the town of Carrizozo in said county, and of erecting and constructing buildings for a court house and a jail at said town of Carrizozo and of holding sessions of said Board of County Commissioners at said Carrizozo, claiming the same to be the county seat of said county of Lincoln and that the town of Lincoln is not such county seat; at which said last named place, the town of Lin-
3 coln, the said county seat of said Lincoln County has been established and located ever since the organization of said town; and also of preparing buildings and places at said town of Carrizozo for the removal of all of the public offices of said County of Lincoln thereto, and in which to keep and deposit all the public records of said County, and is now erecting buildings for a court house and jail at said Carrizozo to be used ostensibly as a court house and jail of said county for the holding of the sessions of the district court, probate courts, and Board of County Commissioners of said county, and for that purpose is paying out large sums of money to contractors therefor from the public funds of the County of Lincoln, and has also provided buildings and accommodation for holding the District Courts for the County of Lincoln at said town of Carrizozo and is still continuing to do so; that said Board is recognizing the said town of Carrizozo as the county seat of said County of Lincoln, and has, by an order of the said Board, decreed and declared that the said county seat of the said County of Lincoln has been changed by virtue of an alleged election pretended to have been held under its direction and order from the town of Lincoln to the town of Carrizozo in said county; that said change is pretended to have been made in said county seat from said town of Lincoln to said town of Carrizozo by virtue of the provisions of an alleged or pretended act of the Legislative Assembly contained in Chapter 80 of the printed Laws of 1909, which said pretended law was never lawfully enacted and is in violation of the statutes of the United States, as is alleged and claimed by the relator, and as the Territory is informed and believes. Said election was also illegally authorized, ordered or called by virtue of a petition to said Board "to call an election to submit to a vote of the qualified electors of said County of Lincoln
4 the proposition to remove the county seat of said Lincoln County to Carrizozo, a town situated on the El Paso & Southwestern Railroad," and not by virtue of or in accordance with any petition to said Board "asking for the removal of the County seat of said county to some other designated place" or Carrizozo, no such petition asking for the removal of the county seat of said county

to said Carrizozo ever having been presented to said Board. Said election is claimed to be void because no registration of voters was had therefor, and because the county of Lincoln at the time said election was ordered to be held had a court house and jail, the original construction of which had cost that county more than $30,000.00, and the sum of $40,000.00 had not and never has been deposited with the Treasurer of said County for the purpose of erecting a court house and jail and other required public buildings at said Carrizozo. Said alleged change of said county seat from the town of Lincoln to the town of Carrizozo is illegal and contrary to law for many and various other reasons, which will be shown to the court, and therefore, and for many other reasons which will be made manifest to the court upon the hearing of this cause, the said Board of County Commissioners have and are, without authority by law or lawful warrant, grant or legal right, using the liberties, privileges and franchises hereinbefore set forth, which said liberties, privileges and franchises the said Board of County Commissioners have heretofore been usurping, and do now usurp upon the Territory of New Mexico to its great damage and prejudice. Wherefore, the said Attorney General prays the advice and judgment of the said Sixth Judicial District Court, sitting in and for the County of Lincoln in the Territory of New Mexico, in the premises, and that due process of law against the said Board of County Commissioners in this behalf be had, and that it be made to answer unto the Territory of New Mexico by what warrant it claims to have, use and enjoy the liberties, privileges and franchises aforesaid.

JACOBO J. ARAGON, *Relator.*
FRANK W. CLANCY,
Attorney General.
GEORGE B. BARBER,
Lincoln County, N. M.;
T. B. CATRON, *Santa Fe, N. M.,*
Attorney- for the Relator and Informant.

TERRITORY OF NEW MEXICO,
County of Lincoln:

Jacobo J. Aragon, being duly sworn upon his oath, says: that he has read over the foregoing information and knows and understands the contents thereof; that the same is true of his own knowledge, except as to the matters and things therein stated on information and belief, and that as to those matters he believes it to be true; that he is the relator in the foregoing information.

JACOBO J. ARAGON, *Relator.*

Subscribed and sworn to before me this — day of September, A. D. 1910.

JOHN M. PENFIELD,
Notary Public.

My Commission Expires —.

And afterwards, to-wit, on the — day of ——, 1911, the said defendants filed a demurrer in said cause to the said information which is in words and figures as follows, to-wit:

TERRITORY OF NEW MEXICO,
County of Lincoln:

In the District Court.

TERRITORY OF NEW MEXICO on the Relation of JACOBO J. ARAGON,
Plaintiff,

6 vs.

THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, NEW MEXICO, Defendant.

The defendant demurs to the information and complaint filed herein and for ground of demurrer shows to the court:

1. That said information and complaint does not state facts sufficient to constitute a cause of action.

2. That plaintiff and all parties aggrieved by the alleged acts of defendant have full and adequate relief and remedy in the usual course of proceedings at law and by the ordinary forms of civil actions.

3. That the said information and complaint does not show or charge that defendant has usurped any office or franchise.

HEWITT & HUDSPETH,
Associate Counsel and Attorneys for Defendant.

And thereafter, the said demurrer coming on for hearing before the Court and the Court having heard arguments pro and con, and being fully advised in the premises, it was ordered, considered and adjudged by the court that the said demurrer be, and the same was, overruled and disallowed, and that the said defendant have leave to answer further said information.

And afterwards, to-wit, on the 18th day of January, 1911, there was filed by the defendant in the said cause an answer to said information, which is in words and figures following, to-wit:

TERRITORY OF NEW MEXICO,
County of Lincoln:

In the District Court.

7 No. 1978.

TERRITORY OF NEW MEXICO, by Its Attorney General, FRANK W. CLANCY, on the Relation of JACOBO J. ARAGON
vs.
THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, NEW MEXICO.

Information in the Nature of Quo Warranto.

Defendant's Answer.

The defendant comes and in answer to the information and complaint of the plaintiff, says:

1. It denies that the relator, Jacobo J. Aragon, is a large individual tax-payer to the county of Lincoln or to the Territory of New Mexico.

2. That defendant denies on its information and belief, that the information and complaint herein is, in fact, the information and complaint of the Attorney General for and on behalf of the Territory of New Mexico, but defendant alleges, upon like information and belief, that the same was filed and is being prosecuted by the relator, Jacobo J. Aragon, by and through attorneys employed by the said relator and on his behalf.

3. The defendant denies, on its information and belief, that the said relator has such an interest in the matters at issue in this cause as to entitle him to prosecute the same, and to call on this defendant to show why it has exercised and is exercising the franchises and rights named in the information and complaint herein, and it denies the right of said Attorney General to present such information except on behalf of the Territory of New Mexico and it denies his right to so prosecute on the relation of an individual who has no right or interest in the premises.

4. The defendant admits that it has by its order changed the county seat of said Lincoln County from Lincoln and established the same at the town of Carrizozo in said county. It admits that
8 it entered into a contract for the erection of buildings for a court house and jail for said county, at the said town of Carrizozo; it admits that it has held meetings of the Board of County Commissioners at said town of Carrizozo and that it claims the said town to be the county seat of said Lincoln County; it admits that it has been preparing buildings and places at said town of Carrizozo in which to keep and deposit all public records of said county and for holding of the sessions of the District Court, Probate Court, and the Board of County Commissioners, with the intention of removing all

of the public offices of said county of Lincoln to said town of Carrizozo; it admits that it has paid out considerable sums of money to the contractor therefor from the public funds of said Lincoln County, derived from the sale of bonds of said county, issued for that sole purpose by virtue of the statutes of New Mexico herein mentioned, and was so paying out money until restrained by the injunction of this Court; it admits that it has provided buildings for the holding of the District Court for the County of Lincoln at said town of Carrizozo, and still continues so to do.

5. This defendant admits that it has, by its order, declared that said county seat has been changed from the town of Lincoln to the town of Carrizozo and that said change has been made under and by virtue of an Act of the Legislative Assembly of New Mexico contained in Chapter 80 of the Laws of 1909 and the acts to which the same are amendatory.

6. The defendant denies, on its information and belief, that said Chapter 80 of the laws of 1909, failed of lawful enactment, and it denies that the same is in conflict with any of the laws of the United States.

7. This defendant alleges that on the 6th day of July, 1909 and at the regular session of the Board of County Commissioners of said Lincoln County, there was presented to said Board a petition,
9 signed by qualified electors of said county, in number largely in excess of one-half of the legal votes cast at the last preceding general election held in said county, asking for the removal of the County seat of said county to the town of Carrizozo in said county, a copy of which is filed herewith and marked "Exhibit A" and which petition was duly recorded in the records of said county; defendant further alleges that the said town of Carrizozo is more than twenty miles from said town of Lincoln and situated on a line of railroad, while the said town of Lincoln is not so situated.

8. The defendant further alleges that at said meeting of the Board there was presented to it a deed conveying to said County of Lincoln, by a good and perfect title, block eight (8) in the said town of Carrizozo, which block contains more than three-fourths of an acre, which deed of conveyance was then and there accepted by the Board.

9. This defendant denies that said Lincoln County had at that time, public buildings consisting of a court house and jail, the original construction of which cost the county more than thirty thousand dollars, but alleges that such court house and jail originally cost the county much less than that sum as shown and ascertained by and from the records of the Board of County Commissioners of said county.

10. This defendant further alleges that after the presentation of said petition and the acceptance of said deed of conveyance said Board of County Commissioners made an order directing that the proposition to remove the county seat of said county to the town of Carrizozo, the place designated in said petition, be submitted to a vote of the qualified electors of said county at a special election for that purpose, and after having given notice by publication of such

order in the Carrizozo News, a newspaper of general circulation in said Lincoln County, for four consecutive weeks immediately prior to such election and by hand bills caused to be posted at three of the most public places in each precinct in said county, four weeks prior to such election, the same was held on the 17th day of August, 1909. A copy of said order so published and so posted is herewith filed and marked "Exhibit B."

11. The defendant further alleges that in pursuance of said order, so published and posted the election was held on the day aforesaid and on the 23rd day of August, 1909, the Board of County Commissioners of said county met at the county seat and canvassed the votes cast at said election, and it appearing from the returns thereof that Carrizozo had so received for county seat Nine Hundred (900) votes and that Lincoln had received for county seat Six Hundred and Thirteen (613) votes, the returns of such election were thereupon certified by the Probate Clerk to the Territorial Secretary, together with the order of the County Commissioners and a sworn certificate of the publication thereof. A majority of the votes so cast having been in favor of Carrizozo it was declared by the Board of County Commissioners to be the county seat of said Lincoln County. The board thereupon caused a notice to be published in the said Carrizozo News for four consecutive weeks, a copy of which notice is herewith filed and marked "Exhibit C."

Wherefore, defendant prays judgment.

HEWITT & HUDSPETH,
Attorneys for Defendants.

TERRITORY OF NEW MEXICO,
County of Lincoln:

Robert H. Taylor, being duly sworn says that he is one of the County Commissioners of said county, the defendant, that he has read the foregoing answer and knows the contents thereof and that the same is true of his knowledge except as to those matters therein stated on information and belief and as to those matters he believes them to be true.

ROBERT H. TAYLOR.

Subscribed and sworn to before me this 17th day of January, 1911.

EDGAR H. B. CHEW,
Notary Public.

My Commission Expires —.

And afterwards, to-wit, on the 21st day of February, 1911, there was filed in said cause, on behalf of the plaintiff, a reply to the foregoing answer, which is in the words and figures following, to-wit:

In the District Court for the County of Lincoln, Territory of New Mexico.

No. 1976.

TERRITORY OF NEW MEXICO, by Its Attorney General, FRANK W. CLANCY, on the Relation of JACOBO J. ARAGON,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, NEW MEXICO.

Information in the Nature of Quo Warranto.

Comes the plaintiff in the above entitled cause, and for reply to the answer of the said defendants therein says, that it denies each and every allegation of new matter in the said answer, if any there be therein, but protests that there is no new matter therein which needs a reply.

F. W. CLANCY,
Attorney General.
T. B. CATRON,
Santa Fe, N. M.,
Counsel.

And immediately thereafter the said Court rendered and entered judgment in said cause in words and figures following, to-wit:

12 TERRITORY OF NEW MEXICO, by Its Attorney General, FRANK W. CLANCY, on the Relation of JACOBO J. ARAGON,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, NEW MEXICO.

The above entitled cause coming on for hearing upon the evidence and stipulations introduced in evidence and upon the findings of fact and conclusions of law made by the court, and the Court being fully advised in the premises, it is ordered, considered and adjudged that the Writ of Quo Warranto applied for by the said plaintiff be not allowed or issued and that the information of the said plaintiff, filed, praying for the said Writ of Quo Warranto be, and the same hereby is dismissed, and that the said defendant go hence without day and that it do have and recover of the said plaintiff its costs in this behalf laid out and expended to be taxed and that it have proper process of the court therefor.

E. R. WRIGHT,
Judge of the Sixth Judicial District
Court, Territory of New Mexico.

Afterwards and immediately upon the rendering and entering of the judgment last above recited, the plaintiff in open court

and while court was still in session at the rendition of said judgment applied to the court and prayed for an appeal from said judgment to the Supreme Court of the Territory, which motion was granted and appeal allowed in the words and figures following:

TERRITORY OF NEW MEXICO, by Its Attorney General, FRANK W. CLANCY, on the Relation of JACOBO J. ARAGON,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, NEW MEXICO.

The plaintiff in the above entitled cause having applied to the court for, and prayed for an appeal in the above entitled
13 cause from the judgment rendered and entered therein, in open court, at the time of the rendering and entering of said judgment and the court being fully advised in the premises sustained said motion or prayer for appeal, it is therefore ordered, considered and adjudged that the appeal applied for and prayed for in the above entitled cause from the final judgment rendered therein by the said plaintiff be, and the same hereby is granted and allowed, and the Clerk of the Court directed to prepare and transmit to the Clerk of the Supreme Court the proper transcript of record in said cause.

E. R. WRIGHT,
Judge of the Sixth Judicial District Court, Territory of New Mexico.

TERRITORY OF NEW MEXICO,
County of Lincoln:

This is to certify that the foregoing 27 pages and part of one page of typewritten matter contains a true, perfect and complete record and copy of all of the evidence, pleadings and procedure which were had in the District Court for the County of Lincoln, Territory of New Mexico, in the above entitled cause, as set out at the caption thereof, to-wit:

TERRITORY OF NEW MEXICO, by Its Attorney General, FRANK W. CLANCY, on the Relation of JACOBO J. ARAGON,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, NEW MEXICO.

except so much of the evidence as was omitted therefrom by agreement and stipulation which was signed by the parties at the time and is attached hereto.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of the Sixth Judicial District Court this the 19th day of July, A. D. 1911.

[SEAL.]

CHAS. P. DOWNS,
Clerk of the Sixth Judicial District Court, Territory of New Mexico.

14 And afterwards, to-wit, on the 10th day of August, A. D. 1911, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, an Assignment of Errors in the above entitled cause, which said Assignment of Errors was and is in the following words and figures, to-wit:

In the Supreme Court of the Territory of New Mexico, January Term, 1911.

THE TERRITORY OF NEW MEXICO, by Its Attorney General, FRANK W. CLANCY, on the Relation of JACOB J. ARAGON, Plaintiff.

VS.

THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, NEW MEXICO, Defendants.

Appeal from the Sixth Judicial District Court, Lincoln County.

Comes the plaintiff in the above entitled cause and says that manifest error has intervened in the trial of said cause in the District Court for the County of Lincoln against the rights and interests of the said plaintiff, in this.

1. The court erred in rendering judgment in favor of the defendant and in dismissing the said Information, instead of rendering judgment in favor of the plaintiff in said cause.

2. The Court erred in not finding, as a conclusion of law, that Chapter 80, as it was pretended to have been amended and printed in the Laws of 1909, had never been lawfully enacted.

3. The Court erred in failing to find as a conclusion of law, that Chapter 80, as it was pretended to have been amended and printed in the Laws of 1909, had not become a law of this Territory.

4. The Court erred in failing to find, as a conclusion of law, that Chapter 80, as it was pretended to have been amended and printed in the Laws of 1909, even if it was otherwise legally enacted, was a special or local law and in contravention of the Statutes of the United States prohibiting any special or local legislation in this Territory in reference to changing of county seats.

15

5. The Court erred in not finding, as a conclusion of law, that the petition which was presented to the Board of County Commissioners praying the Board "to call an election to submit to a vote of the qualified electors of said County the proposition to remove the county seat of said Lincoln County to Carrizozo, a town situated on the El Paso & Northwestern Railroad," was not such petition as the statute required to authorize the calling of a special election to vote on the proposition to change the county seat of said county, in said county.

6. The Court erred in failing to find, as a conclusion of law, that no petition "asking for the removal of the county seat of said County to some other designated place", or to Carrizozo, having been presented to said Board, that said Board was without jurisdiction to call an election to vote on the proposition of the change

of the county seat to Carrizozo, and that therefore the election which was pretended to have been held was illegal and void, and that the order changing the said county seat or declaring it to be changed, to Carrizozo, was illegal and void.

7. The Court erred in not finding, as a conclusion of law, that the said pretended election in reference to the change of the county seat of said county having been held without any registration of the voters therefor, that the same was illegal and void, and that the order for the change of said county seat or declaring it to be changed, given by said Board, was without authority of law and had no legal binding, force or effect.

8. The Court erred in not holding as a conclusion of law that before any election could be held for the change of a county seat there must be a registration of the qualified voters for said election, as declared by law.

16 9. The Court erred in not finding as a conclusion of law that the county seat of Lincoln County was still at Lincoln and had not been legally changed or authorized to be changed to Carrizozo or any other place.

10. The Court erred in many divers and sundry other holdings, findings and conclusions made and determined by it on the trial of said cause.

Plaintiff therefore prays that the judgment of the court below may be reversed, and that judgment be entered here- in favor of the said plaintiff in said action, and maintaining the county seat at the said town of Lincoln, and that it may have such other relief as it is entitled to under the facts in said cause.

THE TERRITORY OF NEW MEXICO,
By F. W. CLANCY, *Its Attorney General;*
By T. B. CATRON, *Counsel for Plaintiff.*

And afterwards, to-wit, on the 10th day of August A. D. 1911, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, a certified copy of the appeal bond in the above entitled cause, which said Appeal Bond was and is in the following words and figures, to-wit:

Know all men by these presents, that we Jacobo J. Aragon as principal, and H. Lutz and Lola S. Norman as his sureties are held and firmly bound unto the Board of County Commissioners of the County of Lincoln, Territory of New Mexico in the sum of One Thousand Dollars, for the payment of which well and truly to be made we bind ourselves, our heirs, executors, administrators and assigns jointly and severally firmly by these presents:

Sealed with our seals and dated this 29th day of March,
17 A. D. 1911.

The condition of the above obligation is such that whereas, the plaintiff in the case of the Territory of New Mexico by Frank W. Clancy, her Attorney General, on the relation of Jacob J. Aragon, against the Board of County Commissioners of the County of Lincoln, Territory of New Mexico, being an information in the

nature of quo warranto has appealed from the judgment of the District Court in said case dismissing said information and giving judgment against the said plaintiff.

Now, therefore, if the said plaintiff in said cause shall prosecute its said appeal with diligence and effect and abide by and keep and perform the judgment of the Supreme Court of the Territory of New Mexico, to which said cause has been appealed, in case said judgment of the District Court be affirmed in said Supreme Court, then this obligation to be void, otherwise to remain in full force and effect.

JACOBO J. ARAGON.	[SEAL.]	$100.00
H. LUTZ.	[SEAL.]	$1000.00
LOLA S. NORMAN.	[SEAL.]	$400.00

TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

On this 29th day of March, A. D. 1911, before me the undersigned, a Notary Public, in and for the County of Lincoln and Territory of New Mexico, personally appeared Jacobo J. Aragon, H. Lutz and Lola S. Norman and each acknowledged that he executed the foregoing obligation as his free voluntary act and deed, and the said H. Lutz and Lola S. Norman each being duly sworn by me, upon his oath says that he is worth in property situate in the Territory of New Mexico in value over and above all of his just debts and liabilities and property exempt by law from execution the sum
18 set opposite his signature to said bond.

In Witness Whereof I have hereunto subscribed my hand and affixed my notarial seal this the day and year last above written.

My Commission expires this 7th day of July, 1911.

[SEAL.]

B. J. BACA,
Notary Public.

April 1, 1911. Bond approved as to form.

CHAS. P. DOWNS, *Clerk.*

(Endorsed:) No. 1976. In the District Court for Lincoln County, Territory of New Mexico. Territory of New Mexico by its Attorney General, F. W. Clancy, on the relation of Jacobo J. Aragon, vs. The Board of County Commissioners of Lincoln County, New Mexico. Plaintiff's supersedeas Bond, on appeal to Supreme Court of New Mexico. Filed in my office this 1 day of Apr. 1911. Chas. P. Downs, Clerk Dist. Court. By Herb. R. Wright, Deputy. F. W. Clancy, Attorney General, Santa Fe, N. M. T. B. Catron, Santa Fe, N. M. Geo. B. Barber, Lincoln, N. M. Attorneys for Plaintiff.

United States District Court, Sixth Judicial District of New Mexico.

Office of the Clerk, Lincoln County.

19 No. 1976.

TERRITORY OF NEW NEXICO, by Its Attorney General, F. W. CLANCY, on the Relation of JACOBO J. ARAGON
vs.
THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, NEW MEXICO.

Certificate of Comparison.

I, the Undersigned, Clerk of the District Court of the Sixth Judicial District of the Territory of New Mexico, embracing the Counties of Otero, Lincoln, Guadalupe and Quay, do hereby certify that the annexed copy is a true and literal exemplification of the Plaintiff's Supersedeas Bond, on Appeal to Supreme Court of N. M. in the above styled and numbered cause; that I have compared the said annexed copy with the original thereof, now on record in this office, and declare it to be a correct transcript therefrom and of the whole thereof.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Sixth Judicial District Court of New Mexico, at my office in Alamogordo, said District, this the 7 day of August, A. D. 1911.

[SEAL.]

CHAS. P. DOWNS,
Clerk Sixth Judicial Court of New Mexico.

And afterwards, on to-wit, at the regular term of the Supreme Court of the Territory of New Mexico begun and held at Santa Fe, the seal of Government, on the first Wednesday after the first Monday in January, A. D. 1911, on the 34th day thereof, the same being Friday, the first day of September, the following among other proceedings were had and entered of record, to-wit:

20 No. 1410.

TERRITORY OF NEW MEXICO, by Its Attorney General, FRANK W. CLANCY, on the Relation of JACOBO J. ARAGON, Appellant,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, NEW MEXICO, Appellee.

Appeal from District Court, Lincoln County.

This cause having been argued by counsel, and submitted to and taken under advisement by the court upon a former day of the

present term, and the court being now sufficiently advised in the premises, announces its decision by Associate Justice Frank W. Parker, Chief Justice Pope, and Associate Justices McFie, Abbott, Mechem and Roberts, Concurring, affirming the judgment of the court below, for reasons stated in the opinion of the court on file. It is therefore considered, and adjudged by the court that the judgment of the District Court in and for the County of Lincoln whence this cause came into this court, be and the same hereby is affirmed, and that in accordance therewith, it is considered and adjudged by the court that the Writ of Quo Warranto applied for by the said plaintiff, be not allowed or issued and that the information of the said plaintiff, filed, praying for the writ of Quo Warranto, be, and the same hereby is dismissed, and that the said defendants go hence without day, and that it do have and recover of the said plaintiff its costs in this behalf expended, for which let execution issue.

And afterwards, to-wit, at the said regular term of the Supreme Court of the Territory of New Mexico, on the 34th day thereof, the same being Friday the first day of September, A. D. 1911, the following among other proceedings were had and entered of record, to-wit:

21 No. 1410.

TERRITORY OF NEW MEXICO, by Its Attorney General, FRANK W. CLANCY, on the Relation of JACOBO J. ARAGON, Appellant,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, NEW MEXICO, Appellee.

Appeal from District Court, Lincoln County.

This cause coming on before the court upon a motion of Appellant herein for a Statement of Facts by the Court in the nature of a Special Verdict, and to be granted an appeal from the judgment and decree of this Court to the Supreme Court of the United States of America, and the Court being sufficiently advised in the premises, grants the same.

It is therefore ordered and adjudged by the Court that the Appellant herein do have and is hereby granted an appeal from the judgment and Decree of this court to the Supreme Court of the United States.

It is further considered, ordered and adjudged by the Court that the following Statement of Facts be and the same hereby are found and made by this court as a Statement of Facts in this cause in the nature of a special Verdict, to-wit:

The Supreme Court of the Territory of New Mexico, in the foregoing suit, makes the following finding of Facts, in the matter of a special Verdict to be used on appeal in the Supreme Court of the United States:

1. That on July 6th, 1909, a petition was presented to the Board

of County Commissioners of Lincoln County in words and figures as follows:

"County Seat Petition.

To the Honorable Board of County Commissioners of Lincoln County, Territory of New Mexico:

We, the undersigned qualified electors of the County of
22 Lincoln, in the Territory of New Mexico, respectfully petition you to call an election and submit to a vote of the qualified electors of said Lincoln County the proposition to remove the county seat of said Lincoln County to Carrizozo, a town situated on the El Paso and Southwestern Railroad."

Which was the only petition presented to said Board.

2. Said petition was signed by at least one-half of the qualified electors of Lincoln County as shown by the last general election in said county.

3. That at the time said petition was presented to the Board, the Board of County Commissioners of Lincoln County received and accepted a good and sufficient deed to block 8 of the town of Carrizozo, which block contained more than three-fourths acre of land for the site of the court house and jail at Carrizozo.

4. On the 7th day of July, 1909, the Board of County Commissioners of Lincoln County, based on said petition above set out, called an election to be held on the 17th day of August, 1909, which order calling such election was in words and figures as follows:

"A petition having been presented to the Board of County Commissioners which is found to have been signed by qualified electors of Lincoln County, New Mexico, equal in number to at least one-half of the legal votes cast at the last preceding general election in said county, asking for the removal of the county seat of said county to Carrizozo, in said county, and that question of such removal be submitted to a vote of the qualified electors of said county.

And the Board finds that the said town of Carrizozo is more than twenty miles from the present county seat of said county. The Board further funds that the original cost of construction of the
Court House and Jail of said County was less than thirty
23 thousand dollars as shown by the records of the Board of County Commissioners of said county. And a conveyance having been made by the Carrizozo Townsite Company, to this county, conveying block Eight in said town of Carrizozo, said Block Eight containing, as shown by the plat of said town, not less than three-fourths of an acre, which said conveyance is hereby accepted. This Board further finds that said town of Carrizozo is situated upon a line of railroad and that the present county seat of said Lincoln County is situated off the line of railroad.

Now, therefore, in pursuance of the prayer of said petition and in accordance with the facts so found and with the statutes in such case made and provided, it is hereby ordered and directed that an election of the qualified electors of Lincoln County, New Mexico,

be held in each of the precincts of said County on the 17th day of August, 1909, and at said election the tickets to be voted shall contain: " For County Seat ——" with the name of the place for which the voter desires to cast his ballot, either printed or written thereon, such ballots shall be canvassed as en elections for County Officers and the returns of such election shall be certified by the Probate Clerk to the Territorial Secretary together with a certified copy of the order of the County Commissioners and a sworn certificate of the publication thereof, to be filed in the office of the Secretary."

5. That no registration of said electors was ordered to be had or was had prior to said election for said election.

6. That an election was held on the 17th day of August, 1909, under the provisions of said order; that at said election 900 votes were cast for Carrizozo and 613 votes for Lincoln, giving a majority of 287 votes for Carrizozo.

7. That thereafter, and on the 23rd day of August, 1909, the votes cast at said election were canvassed by the Board of County Commissioners and the return certified to the Territorial
24 Secretary. That on the same date the Board of County Commissioners issued an order based upon said election returns changing the county seat from Lincoln to Carrizozo. That said order was published for four consecutive weeks.

8. That, thereafter, the Board of County Commissioners issued and sold twenty-eight thousand dollars of bonds of Lincoln County for the purpose of raising money to construct a new court house and jail at Carrizozo.

9. That after the sale of such bonds the Board of County Commissioners entered into a contract for the construction and erection of such court house and jail, and until the construction thereof was stopped by the injunction in Cause #1980, wherein Jacob J. Aragon was the plaintiff, and the defendants in this case, together with one Ben Betzhel were the defendants, up to which time the construction thereof was proceeding and the Board of County Commissioners were paying out various sums under the provisions of said contract.

10. That the matters and things done and performed by the Board of County Commissioners, as set out in the foregoing findings No. 1 to 9 inclusive, were done and performed by the said Board of County Commissioners in an effort on their part to comply with the provisions of Chapter 80 as printed in the official copy of the Session Laws of the New Mexico Legislature of 1909. That Chapter 80 as printed in the official copy of the Session Laws of the New Mexico Legislative Assembly, 1909, is the original council bill #86 as it passed both houses of the legislature. That said act was introduced in the legislature, in the council thereof, on the 17th day of February, 1909, as a bill entitled an "Act relating to the changing of County Seats," and that said bill on file in the office of the Secretary of the Territory is the original bill introduced into the Legislative Council as above stated. That said bill was never enrolled or engrossed
25 but was used as the original for Chapter 80. That said original of Chapter 80 as printed in the official copy of the Session

Laws of the New Mexico Legislature of 1909, as it appears in the office of the Secretary of the Territory on the 7th day of March, A. D. 1911, did not bear the signature of either the President of the Council or the Speaker of the House of Representatives, nor does it bear the signature of the Governor of the Territory or the approval of the Governor of the Territory but shows thereon that it was filed in the office of the Secretary of New Mexico on the 18th day of March, 1909, at 3 p. m., said date being the date of final adjournment of the Legislature of 1909.

That said bill as filed in the office of the Secretary does not show when the same was received by the Governor, nor does it show that said bill was ever received by the Governor.

Each and every one of which findings of fact were made by the trial court and the same were objected to by the plaintiff and said objection overruled and exception take-.

This court further finds that a duly authenticated copy of the said original Council Bill No. 86, which is the original file of Chapter 80 of the printed statutes of the Legislature of 1905, together with all the endorsements thereon, was introduced in evidence on the trial of said cause, and the Court finds the said certified copy of the same and all of the endorsements thereon to be in the words and figures following, to wit:

Council Bill No. 86.

Introduced by Mr. Navarro.

An act entitled "An Act Relating to the Changing of County Seats."

Be it enacted by the Legislative assembly of the Territory of New Mexico;

SECTION 1. That Chapter 119 of the Session Acts of the legislative assembly for the year 1905, approved March 16, 1905, be, and the same hereby is repealed.

SECTION 2. That Section 630 of the Compiled Laws of the Territory of New Mexico of 1897 be, and the same is, hereby amended so as to read as follows:

"SEC. 630. Whenever the citizens of any county in this Territory shall present a petition to the Board of County Commissioners, signed by qualified electors of said county, equal in number to at least one-half the legal votes cast at the last preceding general election in said county, asking for the removal of the county seat of said county, to some other designated place, which petition shall be duly recorded in the records of said county, said board shall make an order directing that the proposition to remove the county seat to the place named in the petition be submitted to a vote of the qualified electors of said county at the next general election, if the same is to occur within one year of the time of presenting said petition, otherwise at a special election to be called for that purpose at any time within two months from the date of presenting said petition; provided: that whenever it

is proposed to remove a county seat of any county which has public buildings consisting of a court house and jail, the original construction of which cost said county more than the sum of Thirty Thousand Dollars ($30,000) such costs to be ascertained from the records of the Board of County Commissioners of said county, then before said board of commissioners shall make such order, so submitting such proposition to remove the county seat, to the qualified voters of said county, shall require from the petitioners or the persons interested in the removal of said county seat a deposit of forty thousand dollars ($40,000.00) in money, which said deposit shall be placed in the treasury of said county, which said sum of money when so placed in said treasury shall be used in the construc-
27 tion of a court house and jail in the event that the proposition for the removal shall receive a majority of the votes cast at such election, but such deposit shall not be required as a condition precedent to submitting such proposition for the removal in counties which have no court houses and jails, the cost to the county of which, as ascertained from the records of said county commissioners is less than said sum of thirty thousand dollars ($30,000.00) as aforesaid; but the same shall be required in all cases when it is proposed to remove a county seat from a point situated on a railroad to another point also so situated; provided further, that the city, town, village, or place named in the petition to which it is proposed to remove said county seat shall be at least twenty miles distant from the then county seat of said county and said petitioners or persons interested in the removal of said county seat shall cause to be conveyed to said county, by a good and perfect title, in the event that the proposition for the removal shall receive a majority of the votes cast at such election, sufficient suitable land to be accepted, if containing as much as three-fourths of an acre for court house, jail and other buildings for such county, the deed for which shall be filed with and accepted by the Board of County Commissioners before calling said election, which deed to be delivered to the grantor therein named in case said proposition to remove said county seat fails to receive a majority of the votes cast at such election, and that no proposition to remove a county seat from a city, town, village or place, situated on a railroad, to one not so situated, shall be entertained or voted upon, and that no vote shall be ordered on substantially the same proposition more than once in ten years."

SECTION 3. This Act shall be in force and effect from and after its passage and all Acts and parts of Acts in conflict herewith are hereby repealed.

28

Endorsed.

Chap. 80.

38th Legislative Assembly.

Council Bill No. 86.

Introduced by Navarro 17th day of Feb., 1909.

An Act entitled an Act relating to the changing of County Seats.

Read first time, read second time, ordered printed and referred to Committee on Co. & Co. Lines.

Delivered to Translator.....1909
Returned to Translator.....1909
Delivered to Printer, 2/17.....1909
Returned to Printer Feb. 23, 1909.....1909
Delivered to Committee Feb. 23, 1909.....1909

Reported to Council by Committee on the 25th day of Feb. 1909 with recommendation
That it be amended report & amendments adopted and bill
Taken up for consideration, read third time preparatory to its passage, placed on its passage and duly passed.
(Signed) WM. F. BROGAN,
Chief Clerk Council.

3/11 Read

Read third time in preparation to its passage, placed upon its passage & duly passed.
(Signed) E. H. SALAZAR,
Chief Clerk House.

Received from H as duly passed & properly enrolled and engrossed.
(Signed) WM. F. BROGAN,
Chief Clerk Council.

Com. on Finance.

3/3
Read first and second time by title and referred to the Committee on Finance.

Del. to Com. 3/4.

Filed in office of Secretary of New Mexico Mar. 18, 1909, 3 p. m.

NATHAN JAFFA, *Secretary.*

29 TERRITORY OF NEW MEXICO,
Office of the Secretary:

Miscellaneous Certificate.

I, Nathan Jaffa, Secretary of the Territory of New Mexico, do hereby certify that there was filed for record in this office, at 3 o'clock p. m. on the 18th day of March, A. D., 1909, the original Council Bill No. 86 as it passed both Houses of the Legislative Assembly of New Mexico, at a session of 1909; that no engrossed or enrolled copy thereof was or ever has been filed in this office; that the said original bill was used as the original for Chapter No. 80 of the Session Laws of that session, and no other copy was used therefor.

I further certify that I have compared the following annexed copy with the said original on file in my office and declare it to be a correct transcript of the whole of said original chapter 80, as consisting of Council Bill No. 86, and the whole thereof, including all of the endorsements thereon.

Given under my hand and the Great Seal of the Territory of New Mexico, at the City of Santa Fe, at the Capitol, on the 6th day of March, A. D. 1911.

[SEAL.] NATHAN JAFFA,
Secretary of New Mexico.

And afterwards on to wit, on the 26th day of September, A. D. 1911, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, an affidavit of Value, which said affidavit of value in the above entitled cause was and is in the following words and figures following to wit:

In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1911.

THE TERRITORY OF NEW MEXICO, by Its Attorney General, FRANK W. CLANCEY, on the Relation of JACOBO J, ARAGON, Appellant,
30 VS.
THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, NEW MEXICO, Appellee.

TERRITORY OF NEW MEXICO,
County of Santa Fe, ss:

Thomas B. Catron being duly sworn, upon his oath says, th- he is one of the counsel for the plaintiff in the above entitled cause and he is personally acquainted with all of the matters involved in said cause; that the matters involved therein are the uses to be made of the moneys which were received by the defendant upon the sale of $28,000.00 of bonds of the County of Lincoln in said Territory; that contracts have been made for the payment of the $28,000.00 which was realized upon the sale of said bonds for the erection of a court house and jail at Carrizozo, in said County; and that there is still in

the treasury of said county at least $15,000.00 of the said moneys, the validity of the payment of which is involved in the above entitled cause, and that amount of money is involved in the said cause; if the plaintiff succe-ds in the said action those moneys cannot be paid out and the right to pay the same is involved in this action; and therefore the amount in controversy in this action exceeds the sum of five thousand ($5,000) dollars exclusive of interest and costs.

(Signed) T. B. CATRON.

Subscribed and sworn to before me this 23rd day of September, A. D. 1911.

TEMPLE WILLISON,
Notary Public.

My commission expires Oct. 10, 1914.

And afterwards on to wit, on the twenty-sixth day of September, A. D. 1911, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico a Bond in the above entitled cause which said Bond was and is duly in the following words and figures following to wit:

31 Know all men by these presents, That we J. J. Aragon, as principal, and Henry Lutz and Anselmo Pacheco as his sureties, are held and firmly bound unto the Board of County Commissioners of Lincoln County, New Mexico, in the full and just sum of Two Thousand Dollars to be paid to the said Board of County Commissioners of Lincoln County, to which payment well and truly to be made we bind ourselves, our heirs, administrators and executors jointly and severally by these presents. Sealed with out seals and dated this 25th day of September, A. D., 1911.

Whereas, lately in the Supreme Court of the Territory of New Mexico in an action depending in said court between the Territory of New Mexico, by its Attorney General, Frank W. Clancy, on the relation of Jacobo J. Aragon, as appellant, and the Board of County Commissioners of Lincoln County, Territory of New Mexico, as appellees, a judgment was rendered against the said appellant, and the said appellant having obtained an appeal to the Supreme Court of the United States from said Judgment to reverse the same in said action, said appeal having been taken in open court.

Now, the condition of the above obligation is such that if the said appellant shall prosecute its appeal to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

JACOBO J. ARAGON. [SEAL.]
HENRY LUTZ. [SEAL.]
ANCELMO PACHECO. [SEAL.]

TERRITORY OF NEW MEXICO,
County of Lincoln:

On this 4th day of September, A. D., 1911, before me the undersigned Notary Public in and for the county of Lincoln, in the

Territory of New Mexico, personally came Jacobo J. Aragon, as principal and Henry Lutz and Anselmo Pacheco as sureties, and each acknowledged before me that he executed the foregoing obligation as his free act and deed, each of them being known to
32 me as the same persons who signed the said obligation, and the said Henry Lutz and Anselmo Pacheco each being duly sworn by me upon his oath says that he is worth in property situate in the Territory of New Mexico over and above his just debts and liabilities and property exempt by law from execution the amount of $2,000.

In witness whereof, I have hereunto subscribed my hand and affixed my notarial seal this the day and year last above written.

My commission expires the 4th day of October 1911.

JOHN W. PENFIELD,
Notary Public.

Approved:

JOHN R. McFIE,
Associate Justice of the Supreme Court of the Territory of New Mex.

And afterwards, on towit, *on* the 26th day of September, A. D., 1911, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, an assignment of errors on appeal to the United States Supreme Court, which said Assignment of errors was and is in the *following* words and figures following towit:

In the Supreme Court of the United States of America.

No. —.

THE TERRITORY OF NEW MEXICO, by Its Attorney General, FRANK W. CLANCY, on the Relation of JACOBO J. ARAGON, Appellant,

VS.

THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, NEW MEXICO, Appellee.

Appeal from Supreme Court of N. M.

Assignment of Errors.

1. The Court erred in not finding that council bill No. 86 had not been legally enacted.

2. In not finding that the alleged election for a change of the county seat had not been legally held.

33 3. In not finding that the alleged chapter 80 of the laws of 1909, even if it has been legally enacted, was either a special or a local law in contravention of the United States Statutes enacted July 30th, 1886, and contained in the first section of Chapter DCCCXVIII of the Statutes at Large, sometimes called the Springer Act, and was therefore null and void.

4. In not finding that there was no evidence that council bill No. 86, which was used in its original shape as the original of Chapter 80 of the Laws of 1909 of the New Mexico Legislature, had ever been signed by the Speaker of the House and President of the Council of the Legislative Assembly of New Mexico, and therefore had not become law.

5. In not finding that council bill No. 86, which was used as the original of Chapter 80 of the laws of 1909, of the New Mexico Legislature, never became a law, it never having been approved by the Governor.

6. In not findind that there was no evidence that said council bill No. 86, which was used as the original of Chapter 80 of the laws of 1909 of the New Mexico Legislature, was presented to the governor three full days before that session of the legislature adjourned, and not being signed or approved by the governor became a law without his signature.

7. The court erred in not finding that there never was any petition signed by a number of qualified voters of Lincoln County, New Mexico, equal to one half of the votes cast at the last preceding general election asking that the county seat of Lincoln County be changed to Carrizozo, and therefore that the said election was illegal and void.

8. The Court erred in not finding that the petition acted upon by the Board of County Commissioners in regard to the said election for a change of the county seat of Lincoln County was not in the terms provided by law nor was it according to the provisions of the law.

9. The Court erred in not finding that the petition which
34 was presented to the Board was not such a petition as the law provided should be made in a case of an application to change a county seat, but was different therefrom; and in addition thereto, was calculated to mislead and deceive the signers thereof.

10. The court erred in not finding that the election in question was void for want of any registration of the names of the legal voters and because said election was held without any registration of the legal voters of said county, as required by law.

11. The Court erred in rendering judgment in favor of the defendants and against the plaintiffs.

12. The court erred in affirming the judgment in favor of the defendants and not rendering judgment in favor of plaintiffs, and in not reversing the judgment of the court below.

13. The Court erred in divers and sundry other respects, as will appear from an inspection of the record and proceedings in said cause.

Wherefore, plaintiffs pray that the judgment and decree of the Supreme Court of New Mexico be reversed in all things, and said cause remanded for proper judgment.

T. B. CATRON, Esq.,
Attorney for Appellants.

And heretofore on to-wit, *on* the first day of September, A. D., 1911, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, an opinion by the Court in the above entitled cause, which said opinion by the court is in words and figures as follows, to-wit:

In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1911.

35 No. 1410.

TERRITORY OF NEW MEXICO, on the Relation of JACOB J. ARAGON, Appellant,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, N. M., Appellee.

PARKER, *J.*:

This is an appeal from a judgment of the District Court of the Sixth Judicial District, sitting in and for the County of Lincoln, dismissing the petition for a writ of quo warranto secured upon the relation of appellant. The case involves no point which has not been heretofore thoroughly considered by this Court in the case of Gray et al. vs. Taylor, et al., 15 N. M. 742, 113 Pac. 588, and the judgment of the lower court upon the authority of that case is affirmed, and it is so ordered.

FRANK W. PARKER,
Associate Justice.

We concur:

WILLIAM H. POPE, *C. J.*
JOHN R. McFIE, *A. J.*
IRA A. ABBOTT, *A. J.*
MERRITT C. MECHEM, *A. J.*
CLARENCE J. ROBERTS, *A. J.*

Wright, A. J. having heard the case below did not participate in this decision.

36 TERRITORY OF NEW MEXICO,
Supreme Court, ss:

I, Jose D. Sena, Clerk of the Supreme Court of the Territory of New Mexico, do hereby certify that the foregoing thirty-five pages contain a full, true and perfect copy of the record and proceedings, pleadings and opinion filed in the above entitled cause which is transmitted to the Supreme Court of the United States, in accordance with an appeal heretofore granted by this Court herein.

Witness my hand and the seal of the Supreme Court of the Territory of New Mexico this the 20th day of September, A. D. 1911.

[Seal Supreme Court, Territory of New Mexico.]

JOSE D. SENA,
Clerk Supreme Court, Territory of New Mexico.

Endorsed on cover: File No. 22,965. Territory of New Mexico Supreme Court. Term No. 889. The Territory of New Mexico, by its attorney general, Frank W. Clancy, on the relation of Jacobo J. Aragon, appellant, vs. The Board of County Commissioners of Lincoln County, New Mexico. Filed December 14th, 1911. File No. 22,965.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1912.

S. T. GRAY AND ROBERT BRADY
vs.
ROBERT H. TAYLOR, ET AL

No. 653.

TERRITORY OF NEW MEXICO, BY ITS ATTORNEY-GENERAL, EX REL
vs.
THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, NEW MEXICO.

No. 483.

BRIEF OF PLAINTIFF.

T. B. CATRON,
GEO. B. BARBER,
Attorneys for Plaintiff.

ALBRIGHT & ANDERSON, PRINTERS, ALBUQUERQUE, N. M.

INDEX.

TABLE OF CASES.

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA.

October Term, 1912.

S. T. GRAY AND ROBERT BRADY
vs. No. 653.
ROBERT H. TAYLOR, ET AL

TERRITORY OF NEW MEXICO, BY ITS ATTORNEY-GENERAL, EX REL
vs. No. 889
THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, NEW MEXICO.

The two above entitles causes involving exactly the same questions and facts are agreed to be submitted together on briefs for decision of this court.

Cause No. 653 is an equitable action brought by plaintiffs as tax payers of Lincoln County, New Mexico, to restrain and enjoin the erection of a court house and jail at Carrizozo in that county and to enjoin the paying out and the expenditure of twenty-eight thousand dollars of money in the treasury of the county, proceeds of bonds issued and sold by the Board of County Commissioners, ostensibly for the purpose of erecting a court house and jail at Carrizozo in said county, the county seat of said county, prior thereto, having

been at the town of Lincoln. The action of the said Board of County Commissioners was pretended to be based upon Section 2, Chapter 80, as printed in the laws of 1909, which chapter was initiated in the legislature of 1909 by Council Bill No. 86. That chapter, omiting Sections 1 and 3, which have no bearing on the question, is in the following words:

CHAPTER 80.

An Act entitled "An Act Relating to the Changing of County Seats." C. B. No. 86; Law by Limitation, March 18, 1909.

CONTENTS.

Be it enacted by the Legislative Assembly of the Territory of New Mexico:

Sec. 1. * * * * * * * * * *

Sec. 2. That Section 630 of the Compiled Laws of the Territory of New Mexico of 1897 be, and the same is, hereby amended so as to read as follows:

"Sec. 630. Whenever the citizens of any county in this Territory shall present a petition to the board of county commissioners signed by qualified electors of said county, equal in number to at least one-half the legal votes cast at the last preceding general election in said county, asking for the removal of the county seat of said county, to some other designated place, which petition shall be duly recorded in the records of said county, said board shall make an order directing that the proposition to remove the county seat to the place named in the petition, be submitted to a vote of the qualified electors of said county at the next

general election, if the same is to occur within one year of the time of presenting said petition, otherwise at a special election to be called for that purpose at any time within two months from the date of presenting said petition: Provided, That whenever it is proposed to remove a county seat of any county which has public buildings consisting of a court house and jail, the original construction of which cost said county more than the sum of thirty thousand dollars ($30,000) such cost to be ascertained from the records of the board of county commissioners of said county, then before said board of commissioners shall make such order so submitting such proposition to remove the county seat, to the qualified voters of said county, shall require from the petitioners or the persons interested in the removal of said county seat a deposit of forty thousand dollars ($40,000) in money, which said deposit shall be placed in the treasury of said county, which said sum of money when so placed in said treasury shall be used in the construction of a court house and jail in the event that the proposition for the removal shall receive a majority of the votes cast at such election, but such deposit shall not be required as a condition precedent to submitting such proposition for the removal in counties which have no court houses and jails the cost to the county of which, as ascertained from the records of said county commissioners is less than said sum of thirty thousand dollars ($30,000) as aforesaid; but the same shall be required in all cases when it is proposed to remove a county seat from a point situated on a

railroad to another point also situated: Provided, further, That the city, town, village or place named in the petition to which it is proposed to remove said county seat shall be at least twenty miles distant from the then county seat of said county and said petitioners or persons interested in the removal of said county seat shall cause to be conveyed to said county, by a good and perfect title, in the event that the proposition for the removal shall receive a majority of the votes cast at such election, sufficient suitable land to be accepted, if containing as much as three-fourths of an acre for court house, jail and other buildings for such county, the deed for which shall be filed with and accepted by the board of county commissioners before calling said election which deed to be re-delivered to the grantor therein named in case said proposition to remove said county seat fails to receive a majority of the votes cast at such election, and that no proposition to remove a county seat from a city, town, village, or place, situated on a railroad, to one not so situated, shall be entertained or voted upon, and that no vote shall be ordered on substantially the same proposition more than once in ten years."

Sec. 3. * * * * * * * * * * *

The plaintiff alleges:

1. That said Chapter 80 of the printed laws of 1909, which was Council Bill No. 86, never legally enacted (T. R. p. 4) and the answer does not deny or make any defense to said allegation.

2. That Council Bill No. 86, which is printed as Chapter 80, Laws of 1909, was never signed by

the President of the Council, nor by the Speaker of the House of Representatives in its supposed passage in the House and Council of the legislature, as required by the rules of both houses before it was presented to the Governor for his approval. (T. R. p. 4.)

3. That the election pretended to have been held on the 17th day of August, 1909, under said alleged Chapter 80, in reference to a change in the county seat of the County of Lincoln, to Carrizozo, was never lawfully held. (T. R. p. 7.) The answer does not deny this allegation nor make any defense to it.

4. That no legal petition as required by said alleged Chapter 80, was ever presented to the Board of County Commissioners as a preliminary to the holding of said election. (T. R. p. 6, also p. 7.) The answer does not deny this or make any other defense thereto.

5. That the said pretended election for changing the county seat was in violation of law, no legal petition therefor having been presented to the said Board of County Commissioners of Lincoln County. This allegation was not denied or otherwise answered.

6. That the county seat of Lincoln County has never been lawfully located or established at Carrizozo. (T. R. p. 9.) This allegation is not denied or otherwise answered.

7. That the expenditure of the money of the county in the erection of a court house and jail at Carrizozo would be illegal and invalid and a total loss to the county. (T. R. p. 9.) This alle-

gation is not denied or any defense whatever made to the same.

8. That a quorum of said Board of County Commissioners on the 9th day of July, 1909, at a meeting of said Board, illegally and wrongfully made an order calling for an election to vote on the proposition to remove the county seat of Lincoln County, to be held on the 17th day of August, 1909. (T. R. p. 3.) This allegation is not denied or otherwise answered.

9. That said election so ordered, was held on said day without any registration of the voters of the County of Lincoln therefor. (T. R. p. 7.) This allegation was not denied or other defense made to the same. Section 1709 Comp. L., New Mexico, provides "Sixty days before any election in this territory, except according as provided in section one thousand seven hundred and twelve, it shall be the duty of the county commissioners in their respective counties, to appoint three capable persons as a board of registration for each precinct in their respective counties, at least one of whom shall belong to a different political party from that of the majority of the said board of county commissioners." And Section 1710 also provides, "It shall be the duty of the board of registration to make out in their respective precincts, the lists of the legal voters, and these shall not be required to be present to be registered."

10. Testimony was taken in the said cause and the judgment of the court, as rendered, was, as follows: "This cause coming on to be heard for final hearing on the 6th day of June, A. D. 1910,

and the court, after having heard the testimony in this cause and arguments of counsel and being fully advised in the premises, it is, by the court, ordered, adjudged and decreed that the injunction issued in this cause be, and the same is hereby, dissolved and plaintiffs' complaint herein be dismissed at their cost." From which judgment plaintiffs appealed to the Supreme Court of the Territory of New Mexico, which court on hearing of the said cause for reasons stated in the opinion of the court, rendered a judgment and decree affirming the judgment of the court below and dissolving the injunction and dismissing the complaint. (T. R. p. 26.) For reasons stated in the opinion of the court (T. R. p. 40 et sec) Two justices of the court held that there was no sufficient petition presented to the Board of County Commissioners to require them to order said election and only two judges held that the petition was sufficient. The opinion being affirmed on that ground on an equal division of the court, but the decision was affirmed by all of the court on the ground that the court had no jurisdiction to entertain the cause except by proceedings of quo warranto, which was the reason why the action embraced in the transcript No. 889 was commenced (T. R. p. 45 for the dissenting opinion of Chief Justice Pope and Associate Justice Wright).

11. Complaint substantially alleged that Chapter 80 under Council Bill 86, was in violation of the statute of the United States, enacted March 3rd, 1886, which provides "that the legislatures

of the territories of the United States now or hereby to be organized, shall not pass any local or special laws in any of the following enumerated cases, that is to say * * * locating or changing county seats * * * "

12. Appellants have filed the following assignment of errors:

ASSIGNMENT OF ERRORS.

1. The Court erred in not finding that Council Bill No. 86 had not been lawfully enacted.

2. In not finding that the alleged election had been legally held.

3. In not finding that the alleged Chapter 80 of the laws of 1909 was either special or local in contravention of the Springer Act, and null and void.

4. In not finding that there was no evidence that the enrolled Council Bill No. 86, claimed to be Chapter 80 of the laws of 1909, had not been signed by the Speaker of the House and the President of the Council, and therefore had not become a law.

5. In not finding that Council Bill No. 86 never became a law, because it was never approved by the Governor.

5½. The court erred in not finding that there is no evidence that Council Bill No. 86 was presented to the Governor three full days before the session adjourned so as to make it become a law under the Governor's signature.

6. The court erred in not finding that there never was any petition signed by a number of qualified voters of Lincoln County equal to one-

half of the votes cast at the last preceding general election asking that the county seat of Lincoln County be changed to Carrizozo, and that therefore the said election was illegal.

7. The court erred in not finding that the petition acted on by the Board of County Commissioners in regard to the election, was not according to law, nor as provided by law.

7½. The court erred in not finding that the petition which was presented to the Board was not such a petition as the law provided should be made, but was different therefrom, and was one calculated to deceive and mislead the signers thereof.

8. The court erred in not finding that the ballots which were directed to be voted were calculated to deceive and mislead the voters and cause them to vote in favor of Carrizozo instead of against it.

9. The court erred in not finding that the ballot which was required by law and by order of the County Board to be voted was void for want of definiteness and clearness to the voters sufficiently to apprise them of their rights and how they should vote.

10. The court erred in not finding that the ballot, which was required to be voted was one calculated to induce votes to favor Carrizozo rather than oppose it, and that under it a voter could not understand his right or the effect of his vote if he wished to vote against the proposition.

11. The court erred in not finding that fraud was practiced in securing signatures to the peti-

tion to such an extent as to infect and render vicious and illegal the whole petition and make it void.

12. The court erred in not finding that there was such an amount of illegal votes cast at such election as to taint the whole election with fraud and render it void.

13. The court erred in not finding that the election was void for want of any registration of the names of the legal voters and because the same was held without any registration, as registration was required by law for all elections.

14. The court erred in not finding that the County of Lincoln had, at the time said alleged election was held, a court house and jail, the original construction of which cost more than $30,000.00 as shown by the record of the Board of County Commissioners.

15. The court erred in not finding that said election was void because the sum of $40,000.00 was not deposited, as required by law, to be used in the construction of a court house and jail at Carrizozo if a majority of the qualified voters were in favor of that place in said election.

16. The court erred in rendering a judgment in favor of defendants and against the plaintiffs.

17. The court erred in dismissing the complaint and in not rendering judgment in favor of plaintiffs in accordance with the prayer of their complaint.

18. The court erred in divers and sundry other respects as will appear from an inspection of the record and proceedings in said cause.

The Supreme Court made a finding of facts in this cause No. 653, which is included in the transcript from page 33 to 38 both inclusive.

CASE 889.

Said cause brought by the Territory of New Mexico by its Attorney-General on the relation of Jacobo J. Aragon, against the Board of County Commissioners of Lincoln County, is an action praying for a writ of quo warranto against the said Board of County Commissioners and was brought by reason of the decision rendered by the Supreme Court of New Mexico in cause No. 653 above referred to. The opinion in that cause alleges that the respondent without any lawful warrant, grant or authority has and does use the liberties, privileges and franchises

1. Of changing and establishing the county seat of Lincoln County, from Lincoln to Carrizozo.

2. Of erecting and constructing buildings for a court house and jail at Carrizozo.

3. Of holding sessions of the Board of County Commissioners at Carrizozo, claiming the same to be the county seat of Lincoln County and that Lincoln is not the county seat; the county seat of said Lincoln County having been established at Lincoln ever since the organization of said county.

4. Of preparing buildings and places at Carrizozo for the removal of the public offices of said county thereto and in which to keep and deposit all the records of said county.

5. And is now erecting buildings for a court house and jail at Carrizozo to be used ostensibly as a court house and jail for said county for hold-

ing sessions of the district court, probate court and Board of County Commissioners of said county and for that purpose is paying out large sums of money to contractors from the public funds of the county.

6. Using private buildings and accommodations for holding the district court for said county at Carrizozo and continuing to do so.

7. Is recognizing Carrizozo as the county seat of said county and has decreed and declared the county seat of said county has been changed by virtue of an alleged election, pretended to have been held under an order, from Lincoln to Carrizozo.

8. Such change is pretended to have been made by virtue of the provisions of an alleged or pretended act of the legislature contained in Chapter 80 of the printed laws of 1909, which said printed act was never lawfully enacted and is in violation of the United States statutes.

9. Said election was legally authorized, ordered or called by virtue of a petition of said Board to call an election to submit to the vote of the qualified electors of said County of Lincoln on the proposition to remove the county seat of said county to some other designated place, or Carrizozo, no petition having ever been presented to said Board for the removal of the said county seat of said county to said Carrizozo as required by law.

10. Said election was void because there was no registration of the voters had for the same. (T. R. pages 1, 2 and 3.)

The defendant demurred to that information (T. R. 4), which said demurrer was overruled by the court (T. R. 4). The defendant then answered the complaint (see pp. 5, 6 and 7) and in the 7th paragraph of its said answer (T. R. p. 3) "it alleges that on July 6th, 1909, at a regular session of said Board, a petition was presented to it signed by qualified voters of said county in number largely in excess of one-half of the legal votes cast at the last preceding general election held in the county, asking for the removal of the county seat, which was filed therewith, marked Exhibit "A" and which petition was duly recorded in said county. That Carrizozo is more than twenty miles from Lincoln and on a line of railroad while Lincoln is not so situated." Said Exhibit "A" is in the following words: "To the Honorable Board of County Commissioners of Lincoln County, Territory of New Mexico: We, the undersigned qualified electors of the County of Lincoln, in the Territory of New Mexico, respectfully petition you to call an election and submit to a vote of the qualified electors of said Lincoln County, the proposition to remove the county seat of said Lincoln County to Carrizozo, a town situated on the El Paso and Southwestern railroad."

The information alleges that the election was legally authorized, ordered or called by virtue of petition to said Board to call an election to submit to a vote of the qualified electors of said County of Lincoln, the proposition to remove the county seat of said Lincoln County to Carrizozo, a town situated on the El Paso and Southwestern

railroad and not by virtue or in accordance with any petition of said Board asking for the removal of the county seat of said county to some other designated place (T. R. p. 2), and the court finds (T. R. p. 15) that the petition, which is set out in full above "was the only petition presented to said Board" consequently there was no petition asking for the removal of the county seat of said county to some other designated place as required by the said alleged Chapter 80. The court affirmed the judgment of the lower court for reasons stated in the opinion of the court on file. (T. R. p. 24.) From which said judgment an appeal was taken to this court and the following assignment of errors was filed (T. R. pages 22 and 23):

ASSIGNMENT OF ERRORS.

1. The court erred in not finding that Council Bill No. 86 had not been legall enacted.

2. In not finding that the alleged election for a change of the county seat had not been legally held.

3. In not finding that the alleged Chapter 80 of 1909, even if it has been legally enacted, was either a special or a local law in contravention of the United States statutes enacted July 30th, 1886, and contained in the first section of Chapter DCCCXVIII of the Statutes at Large, sometimes called the Springer Act and therefore null and void.

4. In not finding that there was no evidence that Council Bill No. 86, which was used in its original shape as the original of Chapter 80 of the

Laws of 1909 of the New Mexico legislature, had ever been signed by the Speaker of the House and President of the Council of the Legislative Assembly of New Mexico, and therefore had not become law.

5. In not finding that Council Bill No. 86, which was used as the original of Chapter 80 of the Laws of 1909, of the New Mexico legislature, never became a law, it never having been approved by the Governor.

6. In not finding that there was no evidence that said Council Bill No. 86, which was used as the original of Chapter 80 of the Laws of 1909 of the New Mexico legislature, was presented to the Governor three full days before that session of the legislature adjourned, and not being signed or approved by the Governor became a law without his signature.

7. The court erred in not finding that there never was any petition signed by a number of qualified voters of Lincoln County, New Mexico, equal to one-half of the votes cast at the last preceding general election asking that the county seat of Lincoln county be changed to Carrizozo, and therefore that the said election was illegal and void.

8. The court erred in not finding that the petition acted upon by the Board of County Commissioners in regard to the said election for a change of the county seat of Lincoln County was not in the terms provided by law nor was it according to the provisions of the law.

9. The court erred in not finding that the pe-

tition which was presented to the Board was not such a petition as the law provided should be made in case of an application to change a county seat, but was different therefrom; and in addition thereto, was calculated to mislead and deceive the siguers thereof.

10. The court erred in not finding that the election in question was void for want of registration of the names of the legal voters and because said election was held without any registration of the legal voters of said county, as required by law.

11. The court erred in affirming the judgment in favor of the defendants and not rendering judgment in favor of plaintiffs, and in not reversing the judgment of the court below.

12. The court erred in rendering judgment in favor of the defendants and against the plaintiffs.

13. The court erred in divers and sundry other respects, as will appear from an inspection of the record and proceedings in said cause.

Wherefore, plaintiffs pray that judgment and decree of the Supreme Court of New Mexico be reversed in all things and said cause remanded for proper judgment.

The Supreme Court made finding of facts in this cause No. 889, which is included in the trancript from page 14 to 20 both inclusive.

POINTS AND AUTHORITIES.

I.

CHAPTER 80 OF THE LAWS OF 1909, RELIED ON AS THE BASIS OF THE RIGHT TO CHANGE THE COUNTY SEAT IN QUESTION, IS BOTH A LOCAL LAW, AND ALSO A SPECIAL LAW, AND IF OTHERWISE LEGALLY ENACTED IS IN VIOLATION OF THE ACT OF CONGRESS, APPROVED JULY 30TH, 1886, COMMONLY CALLED THE SPRINGER ACT, AND IS THEREFORE ILLEGAL AND VOID AND CONFERRED NO RIGHT TO CHANGE A COUNTY SEAT IN NEW MEXICO.

The Springer Act provides: "That the Legislatures of the Territories of the United States now or hereafter to be organized, shall not pass local or special laws in any of the following enumerated cases; that is to say: * * * * locating and changing county seats. * * * * regulating county and township affairs; * * * * granting to any corporation, association or individual any special of exclusive privilege, immunity or franchise whatever. * * * * In all other cases where a general law can be made applicable so special law shall be enacted in any of the Territories of the United States by the Territorial Legislature."

The second section of the alleged Chapter 80, Laws of 1909, provides: "That the city, town village or place named in the petition to which it is proposed to remove said county seat shall be at least twenty miles distant from the then county seat of said county. * * * *and that no proposi-

tion to remove a county seat from a city, town, village or place situated on a railroad to one not so situated shall be entertained or voted upon."

The town of Lincoln, where the county seat has been, is not on a railroad. The town of Carrizozo, the place where they propose to take the county seat, is on a railroad. Of this the Court will take judicial notice. The provisions of Chapter 80 above quoted, exclude in all counties, all towns, cities, villages and places within a radius of twenty miles of any county seat from the privilege or right to have the county seat moved to it. Under that provision no place within twenty miles of Lincoln could have that benefit. The act does not, therefore, act uniformly upon all parts of that county or any other county, nor upon all the people of the county, alike. It is limited and restricted in its operation to cities, towns, villages and people more than twenty miles beyond the county seat.

The Springer Act of Congress forbids a local or special law locating or changing county seats. This alleged law, Chap. 80, does not apply to more than one-half of the State of New Mexico. The territory for a radius of twenty miles around each county seat is excluded from participating in the right to have for itself the county seat; it can only unite in attempting to retain the county seat at the old place or to change it to the new one proposed. The town of Capitan in Lincoln County, lies on the railroad, about twelve or fourteen miles from Lincoln and about eighteen miles from Carrizozo, on a straight line. Under that alleged

act the town of Capitan would have no right to present a petition for the change of the county seat from Lincoln to its place, nor from the town of Carrizozo. Before Capitan could get the county seat it would have to be changed from Carrizozo or Lincoln to some other place twenty miles distant from Capitan on the railroad, if located at Carrizozo or if at Lincoln some other place in the county twenty miles distant from Capitan, but that would take twenty years to accomplish, that is, ten years after the change to Carrizozo to some other place in the county more than twenty miles distant from Capitan and then ten years after that change to get it back to Capitan.

The last clause of Section 2 of the alleged Chapter 80 says: "that no proposition to remove a county seat from a city, town, village or place, situated on a railroad, to one not so situated, shall be entertained or voted upon, and that no vote shall be ordered on substantially the same proposition more than once in ten years."

If a new town on the railroad within nineteen miles of Carrizozo should build up and have a population of fifty thousand people, and Carrizozo should go down to a prairie dog town with no people, the county seat could not be changed to this new town without first changing it to some town more than twenty miles from it, and waiting ten years more for a new election.

The provisions quoted from Chapter 80, especially the first portion of it, make the act in question if valid at all for any purpose, or if properly enacted for any purpose, a local and special

act and void under the Springer Act. The authorities are quite numerous as to what constitutes a local and special act; sometimes they are designated as private acts:

People vs. Supervisors, 43 N. Y. 16;
Matter vs. Henneberger, 155 N. Y. 424-427;
People vs. O'Brien, 38 N. Y., 193;
Ferguson vs. Ross, 126 N. Y., 464;
Closson vs. Trenton, 48 N. Y., 439;
Com. vs. Patten, 88 Pa. St. 260;
Davis vs. Clark, 106 Pa. St. 360;
McCarthy vs. Com. 110 Pa. St. 246 et seq.
Montgomery vs. Co., 91 Pa. St. 125;
Devine vs. Commissioners, 84 Ill., 591, et seq.;
State vs. Herrman, 75 Mo. 346;
Scowdens App. 96 Pa. St. 424-5;
Klokke vs. Dodge, 103 Ill., 125;
State vs. Mitchell, 21 Ohio St. 592;
State vs. Judges, 21 Ohio St. 11;
Strange vs. Dubuque, 62 Iowa, 205;
South. on Stat. Const. Secs. 127, 128, 129, and cases cited;
Smith's Com. Secs. 595 and 596;
Sedg. Const. Law, 32;
Potters Dwarris on Stats. 355;
Ex-Parte Westerfield, 55 Calif. 552;
Desmond vs. Dunn, 55 Calif. 251.

In the case of Ex-parte Westerfield, 55 Calif. 552, the courts say: "A general law must include within its sanction all who come within its limit and scope. It must be as broad as its object. * * * * the prohibitory law must be made appli-

cable to all of a class, * * * To say that every law is general within the meaning of the constitution which bears equally upon all to whom it is applicable is to say there can be no special law."

Sedg. on Stat. Cons. Sec. 127, says: "Special laws are those made for individual cases or for less than a class requiring laws appropriate to its peculiar condition and circumstances; *local laws are special as to place.* When prohibited they are severally objectionable for not extending to the whole subject to which their provisions would be equally applicable, and thus permitting a *diversity* of laws relating to the same subject. The object of the prohibition of special or local laws *is to prevent this diversity.* Each subject as to which such laws are prohibited is by such inhibition designated as a subject of only general legislation; *it shall have a uniform operation.* Generality in scope and uniformity of operation are both essential. A law which embraces a whole subject would be special if not framed to have a uniform operation."

How can it be said that the law in question, providing for the change of county seats, is uniform in its operation, or that there is any *diversity* in its operation? Who dare say that the conditions as to cities, towns and villages and places twenty miles distant from a county seat are different from those within twenty miles from a county seat?

In Van Riper vs. Parsons, 40 N. J. L. 123, that court declared this principle: "That a general law as contradistinguished from one special or

local is a law which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class."

And also, on a second consideration of that case, the court declared: "A law framed in general terms restricted to no locality, and operating equally upon all of a group of objects which, having regard to the purposes of the legislature, or distinguished by characteristics sufficiently marked and important to make them a class by themselves, is not a special or local law without regard to the consideration that within this state there happens to be but one individual of that class one place where it produces effects."

In what manner can it be claimed that any part or rather all the parts of any county in this state lying more than twenty miles beyond the county seat are distinguished from the parts lying within twenty miles of the county seat by characteristics sufficiently marked and important to make them a class by themselves? It has never been held that a county might be divided up by lines generally designated and each division so made be a class by itself having different characteristics and differently marked from each other. If such could be the case, an act might be passed providing that a county seat in each county might be changed to that particular tract of land which was not embraced in any of the townships mentioning them all by name except one. And then it might be limited further to a particular section or a quarter section in that remaining township by prohibiting it from being placed in any other part. This

act certainly prohibits the county seat from being located anywhere within a radius of twenty miles of the county seat, or within a circle forty miles in diameter having the county seat in the center embracing an area of about 33,000 square miles or more than one-half of the public land of the State after taking out Indian and Forest Reservations, or more than one-half of the whole state, there being twenty-six counties and only 78,000 square miles in the state.

In the County of Lincoln the town of Capitan is situated on a railroad, within about twelve miles of the town of Lincoln and about eighteen miles from Carrizozo on a straight line. Can there be any characteristics about the town of Carrizozo which would distinguish it or classify it rather different from the town of Capitan, or from the town of San Patricio in that county about ten miles from the town of Lincoln, on a straight line. How can it be said that any place outside of twenty miles from the town of Lincoln has different characteristics or is any way differently marked, so far as the public interest is concerned, from any place within twenty miles? It never was intended to classify a country by lines drawn through it and make different localities between the lines different classes. It is permitted to make classifications according to population of cities, towns and villages compared one with the other, but not according to their location at a given distance from a point or line.

In Zeigler vs. Gadis, 44 N. J. L., 363, it is said in the syllabus: "The latter law, giving the

courts of common pleas the power to grant such licenses, being restricted to cities, towns and counties by populations which indicate but three small towns in one county, without any apparent distinction which will, in any reasonable degree, account for such restricting, is unconstitutional, being a private, local or special law, regulating the internal affairs of towns and counties."

This is a case where even the matter of population did not make it general, because there was no apparent distinction which would in a reasonable degree account for the restriction. Under our law in this state, where is the distinction which in any reasonable degree can account for the restriction that the county seat when changed should be more than twenty miles from the old one? Why should it be more than twenty miles? What was there, or what is there, as a distinguishing mark or characteristic in cities, towns and villages twenty miles away which will generally distinguish them as a class from those within twenty miles, except the mere matter of distance? Suppose a county was only thirty miles square and the county seat was situate in the center, it would not be possible to change the county seat except probably into one of the extreme corners, or if the county was only twenty miles square, not even to a corner.

In Hammer vs. State, 44 N. J. L. 669, the court say: "Nor can any departure from the rule be justified except where by reason of the existence of a substantial difference between municipalities a general law would be inappropriate to some,

while it would be appropriate and desirable for others. There it would be warranted not only by the necessities of the situation but by a reasonable construction of the constitutional provision. In such a case the municipalities in which the peculiarity exists would constitute a class and the legislation would in fact be general, because it would apply to all to which it would be appropriate. But distinctions which do not arise from substantial differences, differences *so marked* as to call for separate legislation, constitute no ground for supporting such legislation."

Where are the substantial differences in this state so as to classify the towns lying twenty miles from a county seat from those lying within twenty miles of it? What are the substantial differences between those towns? They must certainly be such as the court will take judicial notice thereof. They must not be classified by an imaginary line, but by some circumstance or condition directly affecting them, the one from the other.

The case of People vs. Supervisors, 43 N. Y. 16, is a very instructive case in regard to what is meant by local and special laws. Speaking of the word local as applied to law, the court say:

"By ascertaining what meaning has been given to this word by writers and courts when applied to a statute. Perhaps it is not easy to give a general rule or definition of it, which will be so exact in its scope and limit as accurately to include every proper case, and to exclude all others. And this may be the reason it has been but seldom attempted in the decisions. Elemental writers

aid us somewhat. Bouvier (Law Dict., voce local) defines local, fixedness in a place; "local taxes or those which are collected for particular districts." At the word statute, he makes no mention in his division of statutes of those which are local, but defines private acts as those relating to any particular place, or to several particular places, or to one or several particular counties. In his view, local and private would seem to be convertible terms. So Kent (Comm., vol. 1, p. 415) makes no division of statutes, save into public and private, and defines the latter as such as concern the particular interest or benefit of certain individuals or particular classes of men operating upon a particular thing or private persons; and says, also, "the most comprehensive if not the most precise definition in the English books is, that public acts relate to the kingdom at large." Bouvier (Institutes, vol. 3, p. 95) defines the local courts of the United States as those having jurisdiction over a limited territory only: some larger, some smaller. Jacobs (Law Dict voce Statute) classes acts as general or special, public or private; and defines special and private acts in nearly the words used by Kent. He says that they are classed in three series: 1. Public general acts. 2. Local and personal acts to be judicially noticed. 3. Local and personal acts not printed. And in the second series, he classes road acts and others of an extensive nature made public acts by a clause in them requiring that judicial notice be taken of them. Dwarris on Statutes, vol. 2, p. 463, makes the same division as

Jacobs, and adds: "Acts relating to any particular place, or to divers particular towns, or to one, or to divers particular counties, are private acts." "A statute," he says, "which concerns the public revenue is a public act; but some clauses therein may, if they relate to private persons only, be private." And in volume 1, at page 354, he says: "Every bill for the particular benefit of a person or company, or a locality in which the whole comumnity is not interested, is, in a parliamentary sense, a private bill."

The case above quoted from is a very interesting and instructive case and compiles many of the authorities bearing on this proposition.

On page 18, the court say: "We judge that they employed the word private, as applicable to persons only; and the word local, as applicable to territory only; but both, as words signifying a narrowing or restricting of purpose. Hence, authoritative definitions of the word private, as applied to a law, throw light upon the meaning of the word local, as so applied."

In Ferguson vs. Ross, 126 N. Y., 464, the court say: "A statute may be public and still local, and, therefore, within the purview of the constitution * * *. The fact that an act operates only upon a limited area or upon persons within a specified locality and not generally throughout the state, is, in most cases, a reasonably accurate test by which to determine whether the act is general or local."

Does not that exactly fit this case? The proposed section of the alleged Chapter 80 was intended to operate upon a limited area or on per-

sons within a specified locality, that is, such as were twenty miles beyond the county seat, and not generally throughout the county.

In Matter vs. Henneberger, 155 N. Y. 425, the court say: "That the present act is expressed in general terms is not and should not be decisive of the question of its constitutionality. That is a question which must be decided not by the letter, but by the spirit, of the act."

What is the spirit of the New Mexico Act? It is plain that that amendment was prepared for a specific purpose; it was intended to enable the people in Lincoln County, we will say, or at least a part of them, to change that county seat to Carrizozo; and its purpose was to exclude from competition with Carrizozo or some other town in some other county all cities, towns or villages lying with twenty miles of the county seat. It intended to destroy competition and limit the number of towns of similar character and situation to which the county seat might be changed and exclude all those within twenty miles of the county seat from competing. It did not provide that it should be changed to a place on a railroad, unless the county seat was first located on a railroad. It made no distinguishing mark or characteristic of any city, town or village as being situated on a railroad to which a county seat might be changed from a place not situated on a railroad. Why was it that in changing a county seat it should be changed to a place not less than twenty miles distant? Is there any particular connection between the act or the objects of the

act and the fact that the county seat must be carried twenty miles? Is there anything which appears in the atmosphere of this act that the country around the old county seat was impregnated with some condition of things that rendered it necessary for the general welfare that the county seat should be carried beyond the twenty mile limit? The authorities say that there must be a reasonable ground for the making of the law. Could it be said that the same reason would be applicable to every place in every direction from the old county seat, a distance of twenty miles away, and not be applicable to any place within twenty miles of the old county seat? Did distance make the distinction or create the classification and show an object? If so, how? The object was apparent; it was to destroy the greatest amount of competion for the county seat by legalizing it and excluding those places which might be better fitted for it.

In Van Giessen vs. Bloomfield, 47 N. J. L. 442, it is held, quoting from the syllabus: "The act of 1879, p. 337, is special and local and is therefore unconstitutional so far as it relates to townships. The distinction necessary to mark a class for legislation must be something in the situation or circumstances of the places embraced by the legislative enactment, which would render the powers, if granted, inappropriate to and unavoidable for other like political districts."

What is there in our case that renders localities twenty miles beyond the county seat fitted to take the county seat and which facts are inappropriate

to or unavailable to other places within twenty miles of the county seat? Nothing is pointed out in the act, except the distance between them, and the mere fact that one place is twenty-one miles away from the county seat and the other only nineteen miles, while all the other conditions and circumstances and characteristics pertaining to them are alike, certainly could not be held to be a classification of the kind that would justify general act, and not be held to be local or special.

In Closson vs. Trenton, 48 N. J. L. 440, the act provided that cities containing more than 15,000 inhabitants, and which had a board of excise commissioners, wherein licenses were not granted by the Court of Common Pleas, the Board would be authorized to establish a license and excise the department. That, the court hold, would leave four cities in that condition, the intention being to take the licensing power from the common council where it had previously existed. The court say: "Inasmuch as the granting of licenses is a matter which appertains to all cities, any legislation which deals with the method of granting licenses must apply to all cities or reduce all cities to a uniform system." There is no pretense that in the county of Lincoln or any other county in the Territory the conditions and circumstances and characteristics applicable in each county is uniform as to every locality in the county, except that some of them may be on a railroad; but to get the county seat away from Lincoln there is not even a classification made which would necessarily carry it to the railroad, even if that would classify

it, which it will not.

In Davis vs. Clark, 106 Pa. St. 384, there was an act of the legislature providing that certain laborers and mechanics should have a lien upon engines, engine house, derrick, tank, building, machinery, wood or iron improvements, oil wells and fixtures, and upon the lot or leasehold ground for the price and value of the labor and work, provided that such lien should extend, etc. And it was further provided that the provisions of the act should not apply to counties having a population over two hundred thousand inhabitants. Suit was brought to foreclose a lien under that act, and the question was raised that the lien was void because the act was in contravention of the constitution of the state which prohibited local and special laws authorizing the creation, extension or impairing of liens. The court say: "It shows on its face that it was not intended to apply and does not apply to the whole state. It assumes what was a well known fact that some of the counties had each a population greater than two hundred thousand (200,000) * * *.

"It was not then a general act applicable to every part of the commonwealth. It did not apply to a great number of counties; but there is no dividing line between a local and a general statute. It must be either the one or the other. If it applied to the whole state it is general; *if to a part only, it is local.* As a legal principle it is as effectually local when it applies to sixty-five counties out of sixty-seven as if it applied to one county only. The exclusion of a single county

from the operation of the act makes it local."

In that case sixty-five counties were included in the purview of the act and only two excluded, and those two were excluded on the theory or classification idea that they possessed more than 200,000 inhabitants.

The court on page 385 say: "It is not only local and special but odious in its discrimination. It is a most clear and palpable violation of the constitution which expressly withholds from the legislature all power to create or extend a lien by a local and special law.

"The difficulty here is, not that of classification only; within reasonable limits and for *some purposes* classification is allowable. It has been sustained on the basis of population of counties on the assumption that those having a small population may ultimately have one much larger. Here the larger are excluded. We cannot assume that their population will ever be reduced to less than the number named. They are therefore practically and permanently excluded by the intent and purpose of this act which is special in its terms and local in its effect."

Does not our Territorial Act exclude all cities towns, villages and places within twenty miles of any county seat from having the benefit of the act? And does it not go farther, when it is located on a railroad, does it not prevent it from being taken to any other place in the county off of a railroad. County seats are for the benefit of the people; but the locality of the county seat at a particular place is more peculiarly and especially

beneficial to the inhabitants of that place, or those in the near vicinity of it, than to those who are more distant, and especially is it more beneficial to those who might be near to it when if taken away and removed a distance of thirty miles or more, as in this case, on a straight line, and forty miles or more, by a traveled route; if that place should be in the opposite direction from the county seat to some of the places which were within twenty miles of the county seat, it would be detrimental to their interest rather than beneficial as a proposition by moving it farther from them.

The court will take notice that the City of Las Vegas and the City of Albuquerque are each situate on a railroad and that the county seat of Bernalillo County is outside of the City of Albuquerque and only about two miles distant from it, and the county seat of San Miguel County is outside of the City of Las Vegas, in the town of Las Vegas, which town and city are only divided by the river Gallinas; the court house of San Miguel being less than a mile from the railroad, and that of Bernalillo about two miles and a half only. This act, in terms, expressly excludes all cities situate like the cities of Las Vegas and Albuquerque in respect to the county seats of their counties. Albuquerque is a city of 15,000 people and Las Vegas a city of over 5,000 people and the towns in which the county seats are located are small towns, the county seats having been located in them before the railroads were constructed and they have rather gone down in population and business, while these larger towns have been built

up and would be much more convenient to the people, and certainly would be as valuable in every respect for the county seats as the two smaller towns in the two counties where the county seats actually are. Neither of those counties could have the benefit of the act without waiting ten years to get it. The county seat would first have to be changed to some place more than twenty miles distant from the city, and then it would have to wait ten years to change it back to the city. If the exclusion of the two large counties in Pennsylvania from the benefit of that lien act made the act local and special, would not the exclusion of two of the large cities, Albuquerque and Las Vegas in the state from the benefit of the act make it local and special?

In McCarthy vs. Comm. 110 Pa. St. 246, there was a constitutional provision that the legislature should not pass local or special laws regulating the affairs of counties, cities, wards, boroughs or school districts. An act was passed to regulate in certain important particulars the affairs of certain counties the population of which exceeded 100,000 and was less than 150,000.

The court say: "But by what process of reasoning is this legislation which has selected for its operation three or four counties from all those composing the commonwealth to be justified? Is the justification to be found in the well recognized legislative power of classification? We think not. It is admitted that classification, even where not specially recognized by nature, custom, the laws of trade, or the constitution must, in certain cases,

be adopted ex-necessitate, as in the case of cities under the Act of the 23rd of May, 1874; Wheeler vs. Philadelphia, 27 P. F. S. 338, and Kilgore vs. Magee, 4 Nor. 401.

"General legislation for all of the cities of the commonwealth as a single class having been regarded as impossible, the legislature first divided these municipalities into several distinct classes, and then provided laws and regulations adapted to each class. This, as we have seen, was recognized as legitimate and proper. There is here however, a new and complete classification, and not a mere cutting out of one or more cities designated by population from the general class, and in this, the act of 1874 is distinguished from that of 1883, in which no general classification is attempted, but a special legislation adopted for certain counties selected from all others and to be ascertained from their populations rather than by their names. Under the rulings in Davis vs. Clark, 10 Out. (306 Pa. St.) Commonwealth vs. Patten, 7 Nor. 260, and Scowdens App. 15 Nor. 425, this is not allowable."

"If indeed such legislation were to be recognized as legitimate, vain would be the constitutional prohibition of local or special laws. *But little ingenuity in the way of so called classification would be necessary* to isolate every single county, borough, ward, township and school district in the state and provide for each in its own local code."

This could be done by an act in New Mexico if the alleged Chapter 80 could prevail as a legiti-

mate act. If this could be done the limit could be extended to thirty, forty or fifty miles, and you could make the limit to be outlined by a varied line, one which is neither straight nor circular, so as to make the act operative on a single township or a single city. There is nothing in the act in question which gives any reason why localities within twenty miles of the old county seat should be excluded from the benefit of having the county seat. Why not say in the act that the county seat might be moved to Section 16 in any township more than twenty miles away from the county seat? Each township has a section 16 in it; and if you can exclude all the territory within the limits of twenty miles, why not exclude all of the territory except that within the limits of a particular section or of a particular township? There is an especial benefit to a place in having a county seat; but before any classification can be made with reference to places which might have the county seat, it would have to appear from the nature of the act, from its characteristics and its circumstances, wherein the act would be especially beneficial to those particular localities and not beneficial to others, if made applicable to them. For instance, take the place called Capitan, in the County of Lincoln, which is about twelve miles from the town of Lincoln and about eighteen or nineteen miles from the town of Carrizozo, but less than twenty miles from each of them, on a straight line. This place is situate on a railroad; in every respect, so far as anybody knows, there is no difference between it and Carrizozo, or any town

more than twenty miles beyond the county seat on the railroad, and no other distinction between it and any other town or village in the county, except that it is on a railroad and many of them are not. Where can it appear as to any rights or benefits arising to any one of the towns or village in the county that Capitan would not be entitled to the same? How is Capitan differently circumstanced, except as to the matter of distance, from any other town or village in the county? As a matter of fact Capitan is on the railroad; it is much nearer the center of population of the county than Carrizozo; in every respect it would be more convenient to the great mass of the people in the county than Carrizozo; it has every qualification that Carrizozo has, except that it is not more than twenty miles distant from Lincoln, and possibly there may be some difference in population, but that is not made a qualification by law. Even if it was, that would not affect the character of the law as to being valid or invalid. If you can single out all of a county, except the part within the radius of twenty miles of a given place, to have the rights to the benefit of an act and not allow those within that radius to have it, what prevents you from extending the radius or enlarging the area in any manner you please so as to exclude every place in the county from the benefit of the act, except one single place? Why can you not in such case exclude from the benefit of the act every place, except one which you may mention by name? The right, if it exists, to limit an act in its territorial operations, based upon the

question of territory alone, should have no restriction or limitation in regard to what territory might be given the benefit or excluded from the benefit. Something more than saying it shall be twenty miles distant from a given point must be shown, in order to correctly classify the territory so as to be operated upon by a general act. Suppose the county seat in the County of San Miguel was more than twenty miles away from the city of Las Vegas and the town of Las Vegas which are adjoining each other, could it be considered that an act would be general which might prescribe that the county seat of a county might be changed to an incorporated city or town in a county, but in case of change it could be made only to the one which is farthest from the county seat. Would such act be any more special or general than the one in question? Suppose, for instance, that the county of Lincoln was only forty miles square, and that outside of a circle with a radius of twenty miles, there was only one town, city or village or settlement, and that in the corner of the county, could it be said that an act of the legislature was general and not special or local which permitted the county seat of that county to be changed to the place outside of the circle and into the very corner of the county. Could it be said that when the people, cities, towns and villages lying within the limits of twenty miles of any county seat possessing the same conditions, circumstances and surroundings as those outside of that limit should not have, by an act in reference to the county seat, the same rights, privileges

and benefits as those lying outside of the twenty mile limit? That is what the act in question does; it absolutely prohibits or excludes the people within a radius of twenty miles of the county seat from applying for the change to some place within that radius, but gives that benefit and privilege to places on the outside of that radius. While all the places on the outside of that radius might be less qualified and less suited for a county seat than any one of those inside of the radius. The instances of the cities of Las Vegas and Albuquerque are as strongly suggestive of why this limitation of twenty miles was placed in the law, particularly the city of Albuquerque, which probably contains as much or more population than all the remainder of the County of Bernalillo and could, without doubt, easily get up the necessary petition for the change and easily by a majority vote make the change. Could it be said that there was anything in the conditions and circumstances of Albuquerque which unfitted it to be a county seat, if so, we would like to hear what it was? If this law is void as to its operation upon any county in the Territory, it is void as to its operation upon every one. It cannot be held void as to part not void as to the whole. As a matter of fact, a radius of twenty miles from the town of Albuquerque would exclude from the operation of the act, nearly every town, city, village or settlement in Bernalillo county. Suppose Bernalillo county should be reduced in size until its entire area might be included in a circle of forty miles diameter; or suppose the act in question should be changed to

make a circle of seventy or eighty miles in diameter, that would include every inch of territory in the county of Bernalillo, so that the people of that county could not get the benefit of that act if it was otherwise legal, and such would be the case if the limit was made large enough to cover the entire county of Lincoln or to cover all of it except one section, which could be done if the act in question is valid.

In Scowdens App. 96 Pa. St. 424-5, which was a case where the legislature, as the court say, passed an act in 1879, framed with a view to avoid the unconstitutional features which had been decided to exist in the previous act on the same subject. The act provided "that in all counties of this commonwealth where there is now or may hereafter be a population of not less than sixty thousand inhabitants and in which there is now or may hereafter be any incorporated city of the fifth class, subject to the provisions of the Act of 23rd of May, 1874, and the several supplements thereto, or which may be incorporated under said act, it shall be the duty of the president, judge or the additional law judge, or of either, upon the application of the mayor and council of such incorporated city to make an order for the holding of one week of court, or more, if necessary, at the discretion of the court, after such regular term of the court of said county for the trial of civil or criminal cases in said city."

That court, in commenting on that law, said: "It is no part of our business to discuss the wisdom of this legislation. However vicious in prin-

ciple we might regard it, our plain duty is to enforce it, provided it is not in conflict with the fundamental law.

"It requires but a glance at the act to see that it is an attempt to evade the constitution. *It is special legislation under the attempted disguise of a general law. Of all forms of special legislation this is the most vicious.*"

Is not the New Mexico Act, Chapter 80 of the Laws of New Mexico of 1909, special legislation under an attempted disguise of a general law? Why make the act applicable only to a certain section of the county and exclude from it the best and most populous part of it? Why say that the county seat shall be located over on one side of the county, or in one corner of it, because to exclude it from an area of territory embraced within a circle with a diameter of forty miles, in nearly every instance the county seat would be shoved over, if changed, to a remote locality near the edge of the county or into an unoccupied section of the country, and the people living within the range of twenty miles of the old county seat would have no opportunity to set up their claims to it. Unless this court shall hold that the location of a county seat within any particular city, town, village or settlement is in no manner a benefit or advantage to such city or town or the people thereof, this act cannot be held to be anything but local and special. Is not the location of a county seat in a city, town or village of some special benefit to that town, city or village and the people thereof?

The case of Devine vs. Commissioners, 84 Ill. 591-2-3-4-5, is a very instructive case, with reference to what is local and special law. Under the constitution of Illinois, which contains the exact provisions of the Springer Act and from which the Springer Act was taken, an act was passed by the legislature for the issuance of bonds for the erection of a court house on the site which had been used for a court house and jail and other necessary public buildings for the use of the county, by the terms of which said act it was limited to counties containing over 100,000 inhabitants. The court on page 593 say, speaking of the act: "That it is a local or special law applicable only to Cook County, is a proposition so plain it would bear no discussion, and unless its passage can be justified, for some reason, it is invalid."

In Klokke vs. Dodge, 103 Ill., 126, the legislature in 1881 passed an act "to extend the jurisdiction of county courts in counties in which probate courts are or may be established," and provides: "That in all counties in which Probate Courts are or may hereafter be established, county courts may have concurrent jurisdiction with the circuit court in all cases at law and in equity, except criminal cases where the punishment may be death or confinement in the penitentiary." It was held by that court that the act was unconstitutional, that the extended jurisdiction attempted to be thereby conferred being restricted to county courts in certain counties and not affecting the county courts in all the counties in the state alike,

was within the inhibition of the constiution.

In Iowa the constitution contains provisions similar to that of the Springer Act. The legislature undertook to legalize certain ordinances in the city of Dubuque, granting to a company the right to occupy a street and construct a street railway therein and operate the same, it was conceded that the ordinance of the city was ultra vires, and the court held that the constitution which prohibited local and special legislation prohibited the legislature from validating that ordinance.

There is another reason why this law, according to the expression of many authorities, is local and special. Chapter 80 of the printed laws of 1909, if it ever was legally enacted, is an amendment of section 630 of the Compiled Laws of New Mexico of 1897, which reads as follows:

> "No. 630. Whenever the citizens of any county in this territory shall present a petition to the board of county commissioners, signed by qualified electors of said county, equal in number to at least one-half the legal votes cast at the last preceding general election, asking for the removal of the county seat of said county to some other designated place, which petition shall be duly recorded in the records of said county, said board shall make an order directing that the proposition to remove the county seat to the place named in the petition be submitted to a vote of the qualified electors of said county, at the next general election, if the same is to occur within one year from the time of presenting said petition, otherwise at a special election to be called for that purpose within six weeks from

the date of presenting said petition: Provided, that before making such order the said commissioners shall require a written guaranty from responsible citizens of the place to which the petitioners desire the county seat removed, that they will provide, free of cost to the county, a suitable site and sufficient ground for a court house and jail, and that they will pay to the county treasurer a sum not less than eight thousand dollars to be used in constructing such court house and jail, in the event that the proposition for removal shall receive a majority of the votes cast at such election, and Provided Further, That the city, town or village named in the petition shall be at least twenty miles distant from and of a larger population than the then county seat of said county; and that no proposition to remove a county seat from a city, town or village, situated on a railroad to one not so situated, shall be entertained or voted upon, and that no vote shall be ordered on substantially the same proposition oftener than once in ten years."

It will be seen by comparing section 630 with the amended section 630 that the amendment was made apparently for the purpose of affecting a particular county. Section 630 as it appears in the Compiled Laws of 1897 requires that the petitioners in any event, if the proposition shall be adopted by the people, shall pay to the county treasurer eight thousand dollars to be used in constructing such court house and jail. That provision is omitted from the amendment as contained in said alleged Chapter 80, and a proviso is inserted in lieu thereof, which says:

"PROVIDED, that whenever it is proposed to remove a county seat of any county which has public buildings consisting of a court house and jail, the original construction of which cost said county more than the sum of thirty thousand ($30,000) dollars such cost to be ascertained from the records of the Board of County Commissioners of said county, then before said board of commissioners, shall make such order so submitting such proposition to remove the county seat, to the qualified voters of said county, shall require from the petitioners or persons interested in the removal of said county seat, a deposit of forty thousand ($40,000) dollars in money, which said deposit shall be placed in the treasury of said county, which said sum of money when so placed in said treasury shall be used in the construction of a court house and jail in the event that the proposition for the removal shall receive a majority of the votes cast at such election, but such deposit shall not be required as a condition precedent to submitting such proposition for the removal in counties which have no court house and jails, the cost to the county of which, as ascertained from the records of said county commissioners is less than said sum of thirty thousand ($30,000) dollars as aforesaid; but the same shall be required in all cases when it is proposed to remove a county seat from a point situated on a railroad to another point also so situated."

It will be seen that this amendment was so prepared as to do away with the necessity of paying into the treasury eight thousand dollars in any event, regardless of the cost of the former court house and jail, and also it was so prepared that the thirty thousand dollars should not be paid in

unless the original cost of the old court house and jail at the old county seat should amount to thirty thousand dollars to be ascertained from the records of the county. It was well known at the time this act was passed that possibly the original cost of that jail and court house in Lincoln County and the town of Lincoln would not amount to the sum of thirty thousand dollars, and this act was prepared with the express view of getting rid of the clause requiring eight thousand dollars to be paid in and to make the county pay the total amount of the costs and to avoid the requirements that the county should be reimbursed in any degree for the outlay that it had in the court house and jail already existing, as the amount is placed so high it is impossible for the county of Lincoln, although that county is not specifically mentioned, to show the actual and original cost up to that amount, although the proofs did show very close to it, and in fact as much as that, but the court construed that some of the costs shown by the records were only made for repairs and not as original costs, as will be seen by reading the opinions of the court which will be found in the record. We insist that when an act has been passed, although in a certain way it may be of a general nature, yet if it has the effect of operating specifically and directly upon a particular county, as this one does upon the county of Lincoln, to single it out from all other counties owing to its particular condition as to court house and jail, that such act for that reason is local and special.

Appellants feel it is their duty to call to the at-

tention of the court the case of Codlin v. County Commissioners, 9 N. M. 577. In that case the Supreme Court of New Mexico passed upon some of the provisions of section 630 as they are contained in the Compiled Laws before the pretended adoption of the amendment by Chapter 80 as aforesaid. The court in attempting to construe the twenty mile limit as provided in the original section, and which is copied into the amended section, said, quoting from the original section 630 "That the city, town or village named in the petition shall be at least twenty miles distant from and of a larger population than the then county seat of said county." The court will notice that in the original section the words "and of a larger population than the then county seat" are not copied into the amendment, but are omitted for obvious reasons. The town of Lincoln was a much larger town than the town of Carrizozo. In that case the court further said:

> "These conditions are entirely just and reasonable in the light of what has been said, but, further, the legislature is presumed to have knowledge of the conditions existing in the territory; also of its counties, cities, towns and villages, and of their location and population. It must be presumed to have known that most of the cities and towns of the territory are comparatively small, and in some instances unsuitable for the accommodation of the court, that in many instances especially along the railroads, new cities and towns have been established within one or two miles of each other. Knowing these facts and conditions to exist, it is reasonable

to believe that the legislature in these enactments intended that county seats should be established in the larger cities where the courts and the people attending them could have suitable accommodations and that hereafter county seats shall not be located in smaller cities and towns than those in which they now are. It is also reasonable to believe that the legislature intended, in fixing the twenty mile limit, to prevent cities and towns situated within a few miles of each other from engaging in those injurious contests for the supremacy for the location of the county seat, based upon the population only."

This quotation submits two propositions. The first that the intention of the legislature was that "county seats should be established in the larger cities where the courts and the people attending them could have suitable accommodations and that hereafter county seats shall not be located in smaller cities and towns than those in which they now are." The language of the law to which that alludes was left out in the amendment in Chapter 80, and the reason was, without doubt, that Lincoln was a larger town that Carrizozo, or at least it would require them to go into a controversy between the two towns to ascertain which had the larger population. The petition in that event would have had to set up the fact that Carrizozo possessed a larger population than the town of Lincoln and that would have had to be determined as a fact. By the amendment that was eliminated and the county seat was sought to be changed regardless of the population of the towns of Carrizozo and Lincoln and in disregard of that partic-

ular reason given by the court why that twenty mile clause was inserted in the original law of 1897. As that was omitted in the amendment, that reason for inserting the twenty mile clause falls to the ground, but the Supreme Court in its decision also said:

> "It is also reasonable to believe that the legislature intended, in fixing the twenty mile limit, to prevent cities and towns situated within a few miles of each other from engaging in those injurious contests for the supremacy for the location of the county seat, *based upon the population only.*"

Just what is meant by that is not sure, but we would suppose that the court meant by it that other towns within the limits of twenty miles of the county seat might have larger populations than the town of Carrizozo, or even Lincoln, and that it was the intent of the legislature to avoid taking into consideration the question of population, which would be directly in conflict with the other provision of that opinion, but the other part of the reason given, we believe, is without any good, substantial foundation, and that is to prevent citis and towns situated within a few miles of each other from engaging in those injurious contests for the supremacy for the location of the county seat. Why would that be any better reason than to say that those to the extreme limits of the county should be prohibited in engaging in such injurious contests? If that was the reason, then surely the act must have been special and local, because it prevented towns which might

have a larger population and be more favorably situated than those which have a similar population and were not so favorably situated from engaging in what is styled "injurious contests" for the county seat and allowing the exclusive and sole privilege to be enjoyed by those more than twenty miles distant to engage in such contests. It can hardly be believed that that reason will receive consideration at the hands of the Supreme Court of the United States. It does not seem to us to have any foundation or logic in it. It is without reason and contrary to the very spirit of the prohibition in the "Springer Act," and certainly shows, if it shows anything, that a distinction was being drawn between two parts of the county, giving a preference, privilege and benefit to one part of the county more remote over another part of the county more immediate, and of better and greater facilities and possibly more population. We have referred to this case because we know that appellees rely upon it as being an adjudication of this matter in the Territory of New Mexico, but we do not believe that it is an adjudication of the matter because the principal argument made by the court which may possess any reason in it was eliminated by the amendment intended to be enacted by Chapter 80, that is the provision that the intent of the legislature was to provide for the removal of county seats from smaller towns to larger cities where courts and people attending them could have suitable accommodations, and that thereafter county seats should not be located in smaller cities and

towns than those in which they then were. That argument, we say, might have some force in it, but the alleged amendment under which the proceedings were had eliminated that provision of the statute to which that argument applied, and therefore that argument of the court to establish the validity of the twenty-mile limit falls to the ground with the limitation and the other point falls by its own weight.

II.

CHAPTER 80 OF THE LAWS OF 1909, EVEN IF IT WAS NOT A LOCAL OR SPECIAL LAW, NEVER WAS LEGALLY ENACTED, WAS NOT APPROVED BY THE GOVERNOR NOR WAS IT EVER SIGNED BY THE PRESIDENT OF THE COUNCIL OR SPEAKER OF THE HOUSE OF REPRESENTATIVES. THERE IS NO EVIDENCE THAT IT EVER REACHED THE GOVERNOR MORE THAN THREE DAYS BEFORE THE ADJOURNMENT OF THE LEGISLATURE.

Sec. 1842, U. S. R. S., provides "Every bill which has passed the legislative assembly of any territory shall, before it becomes a law, be presented to the governor; if he approve he shall sign it; but if not, he shall return it, with his objections, * * * If any bill is not returned by the governor within three days, Sundays excluded, after it has been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislative assembly by adjournment sine die prevent its return, in which case it shall

not be a law."

The original bill, Council Bill No. 86, being Chapter 89, has been introduced in evidence, that is a certified copy of it, made by the Secretary of the Territory, duly authenticated by him, that bill although it passed both houses never was enrolled or engrossed, as shown by the finding of facts. (T. R. in No. 653, p. 35 and T. R. in No. 889, p. 16 near the bottom).

The original bill as introduced in the Council was the copy filed to represent an enacted law by the Secretary of the Territory. This copy shows that the Governor's signature is wanting; it also shows that the signatures of the President of the Council and the Speaker of the House of Representatives are wanting. The statement of facts in T. R. 653 at the bottom of page 35 finds "The said bill filed as said act, does not have the signature or approval of the Governor affixed thereto; nor does it have the signature of the Speaker of the House of Representatives or the Presi of the Council attached or affixed thereto." And in the finding of facts in No. 889, page 17, near the top, it is stated that it "did not bear the signature of either the President of the Council or Speaker of the House of Representatives, nor does it bear the signature of the Governor of the Territory, nor the approval of the Governor of the Territory." There is no certified statement, nor evidence of any kind whatever showing that Council Bill No. 86 if it did pass both Houses, was ever presented to the Governor, or if it ever did come into the possession of the Governor,

when it so came into his possession.

Rule 5 of the House provides, that "The Speaker shall sign all bills passed by the House." (Statement of Facts T. R. No. 653, p. 36.) Also Rule 9 of the Council, provides "All acts, addresses and joint resolutions shall be signed by the President." (Finding of facts in T. R. No. 653, p. 35, and T. R. No. 889, p. 16.) These rules are matters, the making of which belong to each House respectively. They are essential and necessary for the proper conduct of the business of each House and cannot be dispensed with.

This proposition is well sustained by the precedents which come down to us from the Common Parliamentary Law of Great Britain, after which all of our legislative bodies have copied, but it is particularly sustained by the fact that the Constitution of the United States, like our laws, does not provide for any rules to be adopted by Congress but it leaves it to those two Houses to adopt rules for their procedure according to the uses and customs which have prevailed in such bodies commencing with the British Parliament and coming down to our time.

In Field vs. Clark, 143 U. S. 671, that court say: "Although the Constitution does not expressly require bills that have passed Congress to be attested by the signatures of the presiding officers of the two Houses, usage, the orderly conduct of legislative proceedings and the rules under which the two bodies have acted since the organization of the government, require that mode of authentication.

"The signing by the Speaker of the House of Representatives, and by the President of the Senate, in open session, of an enrolled bill, is an official attestation by the two Houses of such bill as one that has passed Congress. It is a declaration by the two Houses, through their presiding officers, to the President, that a bill, thus attested, has received, in due form, the sanction of the legislative branch of the government, and that it is delivered to him in obedience to the constitutional requirement that all bills which pass Congress shall be presented to him. And when a bill, thus attested, receives his approval, and is deposited in the public archives, its authentication as a bill that has passed Congress should be deemed complete and unimpeachable. As the President has no authority to approve a bill not passed by Congress, an enrolled act in the custody of the Secretary of State, and having the official attestations of the Speaker of the House of Representatives, of the President of the Senate, and of the President of the United States, carries, on its face, a solemn assurance by the legislative and executive departments of the government, charged, respectively, with the duty of enacting and executing the laws, that it was passed by Congress. The respect due to co-equal and independent departments requires the judicial department to act upon that assurance, and to accept, as having passed Congress, all bills authenticated in the manner stated; leaving the courts to determine, when the question properly arises, whether the act, so authenticated, is in

conformity with the Constitution.

"It is admitted that an enrolled act, thus authenticated, is sufficient evidence of itself—nothing to the contrary appearing upon its face—that it passed Congress. But the contention is, it cannot be regarded as a law of the United States if the journal of either House fails to show that it passed in the precise form in which it was signed by the presiding officers of the two Houses, and approved by the President." (See cases cited.)

To the same effect is Panghorn vs. Young, 32 N. J. L. 30; there are many other decisions to the same effect.

It is recognized in many of the State Constitutions and in all Legislative Bodies that rules of procedure and transaction of business are essential to their success in doing business. Those rules are so made that they are absolutely binding upon the respective legislative bodies, and more especially upon the officers of those bodies. An officer cannot disregard or violate the rules; they cannot be overstepped and can only be evaded in their operation and effect by an affirmative assent thereto by the body itself and then generally requiring a two-thirds vote to do so. These rules of different legislative bodies have the force and effect, generally, of law, and bind the body equally as a law would bind them in the transaction of business therein. The executive of the government cannot ignore these rules; he cannot make a bill become a law when the rules have been violated in passing it or in bringing it to

him; he is a co-ordinate branch of the government.

The Legislative Assemblies of the Territories are the agents and representatives of Congress in the Territory; their authority is delegated authority from Congress. When Congress authorized those legislatures to meet, they met as a substitute for Congress to enact law for the benefit of the Territory, and as such substitute or delegated authority they were governed by the same provisions of the Constitution as Congress is governed. The Constitution of the United States, in Article 1, Sec. 3 thereof, provides that "each House may determine the rules of its proceedings, punish its members for disorderly conduct and behavior, and with the concurrence of two-thirds expel a member.

"Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy."

These are the provisions of the Constitution governing Congress, and they come down to the New Mexico Legislature to govern it, so far as they are applicable, as the common law of this country, the legislature being the agent or substitute for Congress in passing legislation for the Territory. The English Parliament, from which we derive the Common Law of Parliamentary Practice, except as modified by the practice in this country, particularly by the Congress of the United States, is common law to us in this Territory. We have adopted the Common Law

of England as recognized in the United States as the law of this Territory, and when the legislative bodies of our legislature adopt a set of rules and provide therein that those rules shall not be suspended or set aside, except by a two-thirds vote of the body, those rules become a law to the respective bodies, as adopted by each of them, and cannot be varied except by a two-thirds vote. A law cannot be legally enacted in the face of those rules. A statute cannot be passed and enacted into law without a compliance with those rules. It is true, when a bill has been enrolled and is duly signed by the presiding officer of each House, that makes a prima facie case that the rules had been complied with; and to contradict that proposition, the burden is thrown upon the party denying it. In our case the presiding officer of neither House signed the bill, and as the rules require him to do it, the absence of his signature makes a prima facie case that the bill had not passed or the rules had not been complied with, and the burden of proof is then thrown upon the party denying that proposition, even if it was possible to overcome that objection by any other proof than the actual signature of the two presiding officers. And when a bill appears in the statute book apparently as a law, as in this case, if that bill also has not the signature of the Governor, who is required to sign the same, except in certain contingencies, a prima facie case is made that the bill never became a law, and the burden of proof is then thrown upon the party claiming that it had become a law to prove the

exception that would make the bill a law. The only exception that can be proven to make the bill a law in the absence of the Governor's signature would be positive proof that the bill was enrolled in accordance with the rules of the House and Council and the law in such case made and provided, and presented to the Governor for his approval on a day full three days previous to the adjournment of the legislature. The bill in this case, as well as the act, an authenticated copy of which has been introduced, does not show that said bill reached the Governor's hands for approval or for any other purpose three full days before the adjournment of the legislature; that is to say, the legislature adjourned on Thursday, the 18th of March, 1909, the bill must have reached the Governor on Monday, the 14th day of March, or it could not have become a law. There is no legitimate proof in the record anywhere that that bill did reach the Governor as early as Monday. There is an extract which had been introduced from the printed book purporting to be a Council journal of that session of the legislative assembly, but to which there is attached no statement or certificate, or anything else showing that it was printed by authority of the Territory or of the government of the United States, in which statement it is undertaking to say that the Governor has allowed Council Bill No. 86 to become a law by limitations.

Even that statement does not tell when Council Bill No. 86 was received by him. His statement in that regard was a mere conclusion of his own;

he did not give the facts and the details on which it was based; he had no right to decide or proclaim, as Governor, that the law had been complied with without giving the manner and details as to how it had been complied with, nor was he the officer to certify to or announce that fact; he was not a judge at the time in making said statement, nor had he any authority to make such a statement. The only person who could have made such a statement, and then it must have been made showing the facts, especially the date on which the bill was received by the Governor, was the Secretary of the Territory. He must have added his certificate to the bill showing that it had been received by the Governor more than three days before the legislature adjourned and that he had not returned it to the Council with his objection, and therefore that it could become a law without his approval, and he should have endorsed upon it the date it was received by the Governor as was done with regard to the Tariff Act in the 53rd Congress of the United States, when President Cleveland failed to sign that bill.

Cooley on Const. Lim. 7th Ed. 124, says: "In considering the powers which may be exercised by the legislative department of one of the American States it is natural that we should recur to those possessed by the Parliament of Great Britain, after which, in a measure, the American legislatures have been modelled, and from which we derived our legislative usages and customs or Parliamentary Common Law, as well as the precedents by which the exercise of legislative power

has been governed. It is natural also, that we should incline to measure the power of the legislative department in America by the power of the like department in Great Britain; and to concede without reflection that whatever the legislature of the country from which we derive our laws can do, may also be done by the department created for the exercise of legislative authority in this country."

How much more then is the legislative power which was exercised by the legislature in this Territory governed by the precedents set by the Congress of the United States, its creative authority, and in lieu of which it acted in the Territory. It stands as an agent or substitute for the Congress of the United States in the enactment of laws applicable to this Territory, and like any other agent or substitute should be and is governed by the same established precedents, principles and general procedure as may be applicable in its procedure in the enactment of laws. Congress, in the Organic Act, does not require a journal of the procedure to be kept, but in speaking of the veto power of the governors of the territories it refers to the fact that each body does keep a journal and requires that the veto of the Governor shall be entered in the journal and that the ayes and nays shall be called on the passage of the bill over the veto and entered in the journal, thus practically recognizing the same procedure in regard to a journal and its contents as is maintained by Congress itself, so that we must take our precedents in the first place from the

Congress of the United States and through it from the Parliament of Great Britain; and also the same procedure when not prescribed expressly by statute, as practiced by the Congress of the United States in reference to acts which become law without the approval of the President must be adopted here and recognized here, and the same steps taken to show the fact that the act had become a law without the approval of our Governor. We refer the court again to the procedure which is shown in reference to the Tariff Act of 1894, which became a law without the signature of President Cleveland. At the end of that Act, in Volume 28, United States Statutes at Large, 570, is the following: "Received by the President, August 15, 1894." Then immediately following: ("NOTE BY THE DEPARTMENT OF STATE.—The foregoing act having been presented to the President of the United States for his approval, and not having been returned by him to the House of Congress in which it originated within the time prescribed by the Constitution of the United States, has become a law without his approval.")

The court will observe by the foregoing what the practice of the Congress of the United States is, and without doubt will hold that our practice should be similar in New Mexico. Reason and common sense would require the practice to be fully as much in detail as that of Congress. The act should show when the bill was received by the Governor. The courts take notice when Congress adjourns as well as when the legislature ad-

journs. That Congress adjourned on the 28th day of August, 1894, thirteen days after the date at the bottom of the Act, shows it was received by the President more than ten full days before the adjournment of Congress; but as the Act of Congress which makes the provision with reference to a bill which has passed the legislature becoming a law without the signature of the Governor, also provides in the exact language of the constitution, except as to time and the application to the Territory; Section 1842, U. S. R. S., which says: "Every bill which has passed the Legislative Assembly of any Territory shall, before it becomes a law, be presented to the Governor. If he approve he shall sign it, but if not, he shall return it, with his objections, to that House in which it originated, and that House shall enter the objections at large on its journal and proceed to reconsider it. * * * If any bill be not returned by the Governor within three days, Sundays excluded, * * * after it had been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislative Assembly, by adjournment sine die prevent its return."

The 7th Section of Article 1 of the U. S. Constitution provides (2nd Paragraph): "Every bill which shall have passed the House of Representatives and the Senate shall, before it becomes a law, be presented to the President of the United States; if he approve, he shall sign it, but if not, he shall return it, with his objections, to the House in which it shall have originated, who shall

enter the objections at large on their journal and proceed to reconsider it. * * * * If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law."

It will be thus noticed that Section 1842, U. S. Statutes which is the Constitution for New Mexico in part, is taken bodily from the Constitution of the United States, excepting the changes as to time and to make it applicable to the territories. The Constitution of the United States does not provide what the evidence shall be as shown by the act itself to make it a law without the approval of the Governor, but as the date of approval of an act by the President is always placed at the bottom of it with his signature, so is the date on which an act is received by the President which becomes a law without his approval placed at the bottom of the act. This is necessary and just as essential as the approval of the President, because the approval by the President completes the act and makes it a law. The date of the receipt of the act by the President must be placed there in like manner to show that the act was received more than ten days before the adjournment of Congress, in order that thereby it would become a law. In the printed statutes they do not print the President's signature when he approves an act, but they only print at the foot of the act the word "Approved"

giving the date of the approval, leaving off the President's name, which is attached to the word approved and date, by the President to the original. If an act was printed in the laws and did not show upon its face that it was approved by the President or had been returned by him to the House in which it originated with objections, and that the same had been passed by both Houses by two-thirds vote over his objections, or if it did not show that it had been received by him more than ten days before the adjournment of the Congress, and the original act which was enrolled and on file in the office of the Secretary of the State, did not show such facts, would anyone have the hardihood to claim that such had become a law? And the same argument applies in this Territory.

Even if Governor Curry's message, which must have been written before 3 o'clock p. m. of the last day of the legislature, that being the hour certified to by the Secretary of the Territory, that Council Bill No. 86 was filed with him, does say that he allowed Council Bill No. 86 to become a law by limitation, does that show when Council Bill 86 was received by him, if ever received; does it show that it ever was received? Is there anything to show what was the construction placed upon the word limitation? What particular facts went to make up that limitation? There is not a word of proof, or a line, or a scintilla of evidence showing that Council Bill 86 was received by the Governor as early as Monday, March 15th, which was the latest day it could

possibly have been received by him, to make it become a law by the expiration of the last legislative day of that session March the 18th. But when that message was sent the day had not expired, and it may be that Governor Curry, even if he had received the bill, as it appears he did not approve of it, may have returned it to the Council with his objections at the last moment. If he received it on Monday, March 15th, it could not have become a law at 3 o'clock p. m. of March the 18th, because those printed journals, if they are evidence at all, must be taken notice of by the court, and they show that the Council adjourned between 11 and 12 o'clock at night of that day. Before Governor Curry could say in a message that the act had become a law, that entire day must have expired, unless he received the bill as early as Saturday, the 12th of March. But none of those facts are shown.

When we have made a prima facie case as we have in this case that the bill was never signed by either of these officers and was not signed by the Governor, we say the burden of proof immediately goes to the defendants to establish every fact necessary to make that bill a law. As the proofs stand there is no doubt or question as to the bill never having become a law. There is wanting every essential element assuming that it passed both Houses, which facts we deny and say has never been legally proven; there is not another single necessary element appearing in the evidence anywhere to show that anything was done with the bill to make it

become a law. The endorsement upon the bill itself is not legal evidence, but if it was, it does not show that it was signed by either of those officers, or that it was presented to the Governor, or if presented, when it was presented. These are facts after the case made out by the plaintiffs which required affirmative proof by the defendants to show that all necessary steps were had to make the bill a law. They seemed to realize that that burden was thrown on them and undertook to introduce some facts from the printed books styled or called journals of the Houses; but even that, if evidence, did not reach the point of showing that the Speaker and President had signed the bill or that it had actually been delivered to the Governor on any day more than three days prior to the adjournment.

The plaintiff made a prima facie case, and the burden was thrown on defendants to establish the necessary facts to show that Chapter 80 has become a law by legal enactment.

after Howell Nov 98

In State vs. Swift, 10 Nev. 185, the court in deciding as to what a party would look in order to ascertain what was the statute, say: "The question frequently arose in England, but the rule was uniformly maintained that the court would look to the statute-roll and to that alone."

The case of Sherman vs. Story, 30 Calif., 256-7, is a very instructive case and contains reference to various cases as to the common law on the subject which is held to be still in force in nearly all States, except as modified by the constitutions and statutes. The last case says: "The evidence

of the Acts of Parliament or of the Legislature which are made matters of record must be the records of those acts, as much so as the records of courts of justice. In England, general acts are always enrolled by the Clerk of the Parliament and delivered over into the Chancery * * * When enrolled, the enrolled act itself was the original record, and the record was conclusive. * * * * But now suppose that the journals were in every way full and perfect, yet it hath no power to satisfy, destroy or weaken the act which, being a high record, must be tried by itself, *teste meipso*. *** But if the record of the act itself carry the deathwound in itself, then, it is true, that the parchment— no, nor the great seal, either to the original act or to the exemplification of it—will serve as in the 4 H. 7, 18, where the act was by the King and with the consent of the Lords, (omitting the Commons) and was judged therefore void. And he that observes the case 33 H. 9, 17, which was the only case relied upon by the defendant's counsel, shall find it so; and upon this rule the doubt to be conceived, namely upon the Parliament roll itself, not upon the journal." (Hob. 110, 111).

In this case, the validity of the act must be treated by the act itself, as it has been filed in the Secretary's office, the original bill alone being used, there being no enrolled or engrossed copy. That original bill has been made to take the place of an enrolled copy. Evidently because of the shortness of time before the expiration of the session there was no opportunity sufficient to

have it properly enrolled. The effective character of the original bill used as an enrolled bill must be the test of the legitimitacy as an act. There is no signature of either of the presiding officer annexed to or attached to it. The signature of the Governor is wanting. These are both made essentials to its validity. There is no signature showing that the bill was passed in either House coming from a presiding officer thereof. There is no proof aliunde to that effect. There is nothing attached to the bill showing that it was ever received by the Governor, or if received, that it was received more than three days before the adjournment and had become a law by reason of the Governor failing to veto it or return it with his objection. There is no certificate to it signed by anyone that it had become a law by lapse of time after receipt by the Governor, without his approval, even if such certificate would be sufficient. There is only a statement inserted after the title of the act in the printed copy of the act following the words C. B. No. 86; saying "Law by limitation 'March 18, 1909.'" These words are not included in the original record on file in the Secretary's office, a correct copy of that record is set out in full in the evidence in pages 16 to 19, both inclusive, including therein the certificate of the Secretary attached to the said bill, and including therein all the endorsements on the said bill as it passed the Council and House and as they exist on the said bill as it is filed in the Secretary's office and used as the original.

III.

THE PROVISIONS OF THE SECOND CLAUSE OF SECTION 631 OF THE COMPILED LAWS PRESCRIBING THE FORM OF THE BALLOT IS NOT AND CANNOT BE MADE APPLICABLE TO THE ELECTION IN QUESTION, THE BALLOT AS PRESCRIBED IS IN AN UNINTELLIGIBLE FORM TO THE AVERAGE VOTER, IS DECEIVING AND MISLEADING AND MAKES IT UNCERTAIN TO THE AVERAGE VOTER HOW HE SHOULD VOTE, AND THIS IS ALSO APPLICABLE TO THE ORDER FOR THE ELECTION WHICH PRESCRIBED THE FORM OF THE BALLOT.

The second paragraph of Section 631, C. LL. reads: "The ballots to be voted at such elections shall have printed thereon the words: For County Seat——, with the name of the place for which the voter desires to cast his ballot either printed or written thereon."

There is no instruction or direction contained in the law or in the order of the Board of County Commissioners ordering election as to how each voter shall vote. It does not say that those who wish to vote for the change in the county seat shall vote yes, and those who wish to vote against it shall vote no, which is the proposition that the law requires to be submitted, nor does the statute or the order direct that a voter desiring to vote for the place to which the petition asked the county seat to be removed shall insert the name of that place, and particularly it does not direct

or instruct the voter who may object to changing the county seat to the place petitioned for how he shall cast his vote. There is no other proposition submitted or which can be submitted under the law, except the one mentioned in Section 630 C. LL. as amended, which says the "Board shall make an order directing that the proposition to remove the county seat to the place named in the petition, be submitted to a vote of the qualified electors of said county." That is the proposition, to-wit: Shall the county seat be removed to Carrizozo? How can that proposition be fairly and justly submitted to the consideration of the people by a ballot which is in the form designated "For county seat———," with the name of the place for which the voter desires to cast his ballot either written or printed thereon? How would the people who wish to vote against Carrizozo vote? There was no question as to changing the county seat to any other place. Suppose a party voted that ballot as prescribed by the statute, but did not fill in the name of any other place, would that ballot be valid, could it be counted? No place was designated. Suppose the people living in other precincts outside of the precinct where the town of Lincoln is situated, but within a radius of twenty miles of Lincoln, or living anywhere else in the county, had voted for Capitan or any other town within that radius outside of Lincoln, would those votes be valid? The law does not permit the county seat to be changed to one of those places and the vote would be for an illegal proposition.

Or suppose the vote had been filled in for the town of Lincoln, alone, would that be valid? A vote to change the county seat from Lincoln to Lincoln would be merely a *nudum pactum*, and of no value. It is true that such vote might create an inference that such voters wished the county seat to remain at Lincoln. But would such vote have any validity? Even if the votes with Lincoln inserted might be valid, yet there may have been many people in the county who did not wish the county seat removed to Carrizozo and yet would like to change it from Lincoln to their own locality, or to some other place. Yet, under this proposition, even though they might get a majority of all the votes they could not have the county seat removed to their place. It might be indifferent to them whether the county seat stayed at Lincoln or removed to Carrizozo; under such circumstances they would refrain from voting, knowing full well to vote according to their own desires would be a nullity and not secure them the county seat, even if they had a majority of all the votes.

We insist that the law is confusing, misleading, and renders the question doubtful to the voters, and that when such a law provides for an election wherein the voter may not have a clear, unquestioned and intelligent idea as to what is to be accomplished by his vote, it cannot be presumed that the voters will turn out and cast a vote which may not amount to anything, because we insist that a vote in blank, or a vote for a place to which the law prohibited the coun-

ty seat to be removed would be a vote in blank and could not be counted. The voter who stood indifferent as to the removal to Carrizozo and who preferred another place would naturally not go to the polls to do a vain thing. The question submitted, according to Section 630, was as to whether the change could be made to Carrizozo and not to any other place. The voter had no election, except to vote, yes or no. Suppose the voter had filled in the name of Carrizozo in the blank space in the ballot, and then written No after it, would that not have expressed his iden that he did not want it to go to Carrizozo? If he had written in the ballot, Capitan alone, or Capitan yes, that might have expressed his wish or preference, but he could not accomplish it even if he got a majority. Questions wherein the expenditures of public money resulting necessarily in the wasting of public property as this one was should be placed so plain, clear and positive before the voter that he could not mistake his rights or his obligations. It is not clear to the mind of the ordinary voter in this Territory, many of whom are poorly educated, and many of whom as the evidence shows in this case, in that county, could not either read or write and did not understand the English language, under that law how he should cast his vote. When the law said that he could insert whatever place he desired, might he not think that he could get the county seat to that place and might he not also come to the conclusion that by dividing up their votes they would lose it, because they could not get a

majority for their own place and if it was wtihin the twenty mile limit it was expressly forbidden to be voted for, and if out of the twenty mile limit it was not in the purview of the order of the Board calling the election. Where a question is not fairly, intelligently and plainly submitted to the voters in a way that they can understand, but in a way that they may misunderstand it, we insist that such an election on such a question is a nullity. Questions like these affect the public interests of every man in the county.

IV.

THE ELECTION WAS VOID BECAUSE NO PETITION "ASKING FOR THE REMOVAL OF THE COUNTY SEAT OF SAID COUNTY TO SOME OTHER DESIGNATED PLACE," OR TO CARRIZOZO WAS EVER PRESENTED TO OR ACTED ON BY THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, WHEN THEY CALLED THE ELECTION TO BE HELD AUGUST 17 1909.

The foundation for the election in this case, if the statute was valid, to authorize it, was the petition which that statute made it necessary to be presented to the County Board. No petition whatever was presented to the County Board asking for the removal of the county seat of Lincoln County to Carrizozo. The only petition which was presented requested the Board "*to call* an election to submit to a vote of the qualified electors of said County of Lincoln the proposition to

remove the county seat of said Lincoln County to Carrizozo, a town situated on the El Paso & Southwestern Railway." That was a petition not asking for the removal of the county seat to Carrizozo in any manner whatever. It did not suggest in any manner whatever that the parties who signed the petition wished the change made, but only that they would like to have that proposition voted upon. The petition required by the alleged statute had to be in affirmative form expressing the desire that the county seat should be changed to the place designated, and not merely that the people be given an opportunity to vote on the proposition. As we say, this petition is the foundation of the right to hold the election if the law be valid at all, and it is mandatory that the petition be in the shape the law prescribed it should be. An election cannot be held without having the petition exactly as prescribed by the statute. There is no expression in the petition by the Board of County Commissioners that there was *any desire to change* the county seat; that was an essential element to be included in the petition. A mere expression of a desire to have an election to submit to the voters the proposition to remove the county seat might be a petition signed by persons every one of whom did not wish the county seat removed, but wished the question settled for ten years at least, believing that to be an opportune time to do that; or at least a large number of the signers of that petition must have so thought and believed, because it is shown by the testimony

that the party who was circulating the petition, and many of those who signed it did so under the statement or belief that it was to keep the county seat at Lincoln, and not change it. The court can well see how a petition of this kind, which did not inform the signer that he was actually asking for the removal of the county seat to Carrizozo, as the statute required he should do before an election was held, might be deceived and doubtless was deceived by believing that the petition only was asking for a vote on the proposition, and believing that the time was opportune for them to vote on it so as to retain it at Lincoln. This proposition is sustained by the authorities:

Lilly v. Lakin, 56 Ala., 122.
Tally v. Grider, 66 Ala., 122.
Lanier v. Padgett, 18 Fla., 843-4.
McKinley v. Commissioners, 26 Fla., 264, et seq.
Zeiler v. Chapamn, 53 Mo., 405-6.
State ex rel Lexington v. Saline Co., 45 Mo. 242.
State v. Saline Co., Ct. 48 Mo., 390.
State v. Woodson, 67 Mo. 336.
State v. Albin, 44 Mo., 348-9.
Detroit v. Bearss, 39 Ind., 598.
Peoples Bank v. Pomona, 48 Kans., 55.
Culver v. Hayden, 1 Vt., 282. 377
Blackwell Tax Titles, 213.
Pitkin v. McNair, 56 Barb. 77-8.
Wheeler v. Mills, 40 Barb. 644.
Brun v. Eastman, 50 Barb. 639.

People v. Kopplekom, 16 Mich., 342.
Nefzger v. Railway, 36 Ia. 644.
State v. Piper, 17 Neb., 618 & 619.
Adrigone v. McCafferty, 2 Rob. N. Y. 353.

In Lilly v. Tobin, 56 Ala. 122, was a case where there was a petition authorized to be presented to obtain the holding of an election under the local option law. The court say:

"To give the probate judge authority to order an election in such a case a petition must be filed; and the first section of that act declares who may present such petition and what it may contain. This entire proceeding is statutory creating an entirely new jurisdiction unknown to common law and conferring authority on a magistrate of limited and statutory powers not theretofore exercised by him. Under uniform rulings of this court on kindred questions the record must affirmatively show that a petition was filed containing all necessary averments to give jurisdiction to the judge of probate, and nothing can be supplied by intendment. No presumption can be indulged in favor of such proceedings which the record or quasi record does not affirmatively prove. * * * *

"The petition on which the election was ordered was shown to be lost or mislaid. Its contents are proved by the testimony of the ex-judge of probate who ordered the election; and to some extent negatively by the order made when the petition was filed. It was and is fatally defective in not averring that in the opinion of the petitioner the public good will be promoted by a prohi-

bition of the sale or giving away of vinous or spiritous liquors within such limits."

Thus deciding that the requirements of the statute as to the contents of the petition must be followed strictly.

In Tally v. Grider, 66 Ala. 122, which was a proceeding under the local option law applicable to several counties, the court said:

"To give the probate judge authority to order an election, in such case, a petition must be filed; and the first section of that act declares who may present such petition, and what it shall contain. This entire proceeding is statutory, creating an entirely new jurisdiction unknown to the common law, and conferring authority on a magistrate on limited statutory powers, not theretofore exercised by him. Under uniform rulings of this court, on kindred questions, the record must affirmatively show that a petition was filed, containing all necessary averments to give jurisdiction to the judge of probate, and nothing can be supplied by intendment. No presumption can be indulged in favor of such proceedings, which the record, or quasi record, does not affirmatively prove."

"The petition on which the election was ordered was shown to be lost or mislaid. Its contents are proved by the testimony of the ex-judge of probate who ordered the election; and to some extent negatively by the order made when the petition was filed. It was and is fatally defective in not averring that in the opinion of the petitioner the public good will be promoted by pro-

hibition of the sale or giving away of vinous or spiritous liquors within such limits."

Thus deciding that the requirements of the statute as to the contents of the petition must be followed strictly.

The case of Lanier vs. Padgett, 18 Fla. 483, is one directly in point, being a county seat removal case; it was a suit brought for an injunction to enjoin the county board, after the election was held, from passing or adopting an order declaring the county site changed. The allegation of the complaint was that the petition to the Board asking that an election be held did not express a desire for a change nor ask that an election be held to change the location of the county site, but only prayed that an election be called to locate the county site or for the purpose of legally locating the court house.

The act of Florida, cited on page 84, provided: "That the registered voters of any county wishing to change the location of their county site shall present a petition to the Board of County Commissioners of such county signed by one-third of the registered voters *praying for a change of the location of such county site.*"

By Section 2 of the Act it was provided: "That the County Commissioners of any county receiving such petition as above specified shall order an election at the several precincts for the location of such county site, giving at least thirty days notice thereof."

On page 845 of the volume the court say "It is plain that in such cases the Board of County

Commissioners cannot lawfully call an election for a location of the county site unless a petition is presented to them signed by one-third of the registered voters of the county. And from whom must the petition come. It is equally clear that it must come from the registered voters who desire a change of the location. Unless such petition is presented the Board cannot act; that is the precise condition prescribed by the law. A petition asking the Board to call an election for the purpose of legally locating the court house or desiring that the question of the county seat be settled so that suitable buildings may be erected for the business of the county and asking that an election be called for the purpose of locating the county site (as these petitions are variously expressed) do not purport to emanate from or be signed by voters desiring a change of location. For aught that appears in the petitions, none of the signers may have been in favor of a change, as they merely ask that the question of the county seat may be settled and suitable buildings erected, or the court house legally located, and that an election be called for these purposes, and every person signing may have been opposed to any change but merely desired to have a vote which might settle the agitation of the question."

The court held that the petition did not conform to the law and on page 846 the court say: "The result is that the election held under the order of the County Commissioners as alleged was not authorized by law, and the result of the election could not affect a change of the location

of the county site. * * * * An injunction should have been granted.

"The injunction prayed was not to restrain the members of the Board as canvassers of the result of an election, but restrained them from acting upon the result of an unauthorized election. They would, therefore, be not enjoined from doing what the laws required them to do, but from doing an unlawful act. * * * *

"The complainants simply as tax payers in their own behalf and in behalf of other tax payers have a standing which entitles them to a remedy against a threatened wrongful proceeding, which might involve them and the whole people of the county in great expense and confusion and jeopardize the title to property."

This case, while holding that the petition must conform to the requirements of the statute, and is therefore directly in point as to the petition in our case which does not in any manner pray for a change of the county seat or ask that the county seat be changed, or even hint or intimate that it should be changed, but only asks that an election be held to vote on the proposition whether it be changed. The petitioners in our case refrained from asking for a change. Evidently those who promoted the idea of a change saw the difficulty they would encounter in getting signatures if they asked directly for the change and left the question open so that they could apply to persons who would be opposed to the change and ask them simply to join in a petition to vote on the proposition as to whether the change should be made or

not; and it is shown that many persons signed that petition on the representations made to them and the belief they entertained that it was for the purpose of retaining the county seat at Lincoln. This is further borne out by the fact that the number of votes actually cast on the proposition in favor of Carrizozo fell two hundred or more short of the total number of names signed to the petition, and the proof clearly shows that a large number of the men signing the petition did so because they believed they were signing it in the interest of Lincoln as against Carrizozo.

The last paragraph above quoted is very pertinent on another proposition held by the judge of the court below. The judge of the court below apparently held that this suit was an attempt to try a contested election case and not for an injunction against the doing of an illegal act. This is not an injunction to enjoin the canvassing of the result of the election, but to restrain the Board from acting upon that result, being the result of an unauthorized election. The Florida case is directly in point.

But there is another case from Florida of similar import: McKinney vs. Bradford, 26 Fla. 269, et seq. In that case, in 1885, there had been an election to locate the county site of the county on a petition presented to the board for that purpose as alleged. The law of Florida, like our law, did not permit a seceond election under ten years; but in 1887, two years after the former election, the board entertained another petition for a change of the location of the county seat, and or-

dered an election and the taxpayers brought suit to restrain and enjoin the commissioners and the clerk of the circuit court from publishing the order or notice of election locating the county site, or for any purpose having in view the agitation of the question of the removal of the county site, and from holding or ordering an election for said purpose, etc., and from canvassing any votes cast thereat, and declaring the result thereof. An answer was put in admitting generally the prayers of the complaint but alleging that the prayer of the petition was that the county site be changed from Lake Butler to Stark, and not for a change of the location of the county site, and that an election should be called for the purpose of effecting a change. The case was argued and afterwards re-argued, and a great deal of consideration given to it.

On page 273, the court say: "On an application for an injunction a chancellor may go into the merits as disclosed by the bill and which are intrinsic and dependent upon its express allegations and charges."

The court then say: "The bill in this case fails to show that the election of May, 1885, was ordered upon a petition asking for a change of the location of the county seat. It neither alleges expressly that such was the case nor shows the fact by annexing a copy of the petition to it or otherwise. It is true it annexes a copy of the order for the election, but the recital of facts in this order is that the petition prayed for an election to locate the county site. If there was in the

petition any prayer or expression of desire for a change of location of the county site, the bill does not inform us of it. The doctrine of Lanier vs. Paggett, 18 Fla. 482, relied upon by counsel for appellant is decisive of the point that a petition praying for an election to locate the county site is insufficient and that an election ordered upon such petition is void. The fact that the commissioners of 1888 were satisfied that such a petition was regular and in conformity to statutes did not make it so nor give jurisdiction to the Board of County Commissioners of the question of calling an election."

This allegation is very pertinent in this case, because the Board of County Commissioners, although the petition did not contain the same, in their order recited that "A petition having been presented to the Board of County Commissioners which is found to have been signed by qualified electors of Lincoln County, New Mexico, equal in number to at least one-half of the legal votes cast at the last preceding general election in said county, asking for the removal of the county seat of said county to Carrizozo, in said county, and that question of such removal be submitted to a vote of the qualified electors of said county," etc. Thereupon proceeded to order an election to be held "on the 17th of August, 1909," and at said election the tickets to be voted shall contain 'For County Seat————' with the name of the place for which the voter desires to cast his ballot either printed or written thereon. Such ballots shall be canvassed as an election for county officers, and

the return of such election shall be certified by the probate clerk to the Territorial Secretary, together with a certified copy of the order of the County Commissioners and a sworn certificate of the publication thereof to be filed in the office of the Secretary."

It will be seen by this that the commissioners recite that the petition which was presented not only asked that the question of the removal of the county seat be submitted to a vote of the qualified electors, but that the petition itself also prayed for the removal. Such fact as a prayer for the removal can nowhere be found in the petition in evidence.

In the transcript in No. 653, page 37, the statement of facts says:

> "That solely on and pursuant to said petition and its prayers, and for no other reason, the said board by a majority thereof, made an order on the 7th day of July, 1909, calling an election as prayed for in said petition, reciting that a proper piece of land in the town of Carrizozo had been conveyed to the county for said court house, which was accepted."

This statement refers to the petition which is entitled "County Seat Petition" and is copied in full at the bottom of page 36.

In the transcript in No. 889, page 15, the findings of facts, after setting out the petition in full, says:

> "On the 7th day of July, 1909, the Board of County Commissioners of Lincoln County based on said petition above set out, called an

election to be held on the 17th day of August, 1909."

The petition set out is found on that page and reads as follows:

> "We, the undersigned qualified electors of the county of Lincoln in the Territory of New Mexico respectfully petition you to call an election an dsubmit to a vote of the qualified electors of said Lincoln County a proposition to remove the county seat of said Lincoln County to Carrizozo, a town situated on the El Paso & Southwestern Railroad."

and that is the petition which the court in its findings, page 15, say was the only petition presented to said board.

Under the decision last quoted from, the recital of such fact, in the order of the board for an election did not establish such fact. In that case there was a recital that the petition was "regular and in conformity to the statutes." But the court say "That did not make it so, nor give jurisdiction to the Board of County Commissioners of the question of calling an election."

In South. on Stat. Con. 2nd Edition, Sec. 565, it is said:

"A statutory remedy or proceeding is confined to the very case provided for and extends to no other. It cannot be enlarged by construction; nor be made available or valid except on the statutory conditions, that is, by strictly following the directions of the act." See authorities cited in Note 45.

election and submit to a vote of the qualified

The same authority in Sec. 566 says: "The party seeking the benefit of such a statute must bring himself strictly, not only within the spirit, but in the letter; he can take nothing by intendment." Citing Ball vs. Lasting, 71 Ga. 678. St. Paul R. R. Co. vs. Phelps, 26 Fed. 569. Swan vs. Jenkins, 82 Ala. 478.

The same author also in Sec. 572 says: "When a right is given by statute and a specific remedy provided, or a new power and also the means of executing it are therein granted, the power can be executed and the right vindicated in no other way than that prescribed by statute." See authorities cited.

The mode provided for executing the provisions of Section 630, C. LL., as amended, is first by presenting a petition properly signed which must ask for the removal of the county seat to some other designated place. That is a very plain, simple, common-sense requirement. It requires no effort, no study, nor any exertion of mental capacity, legal or otherwise, to determine what that means. A school boy would easily know. It means to say that the signers in the petition say: "We ask that the county seat of Lincoln county be changed to Carrizozo." This requirement is put in this shape so that the persons who signed the petition will be such as will actually desire or wish the county seat to be changed, not those who might desire the question to be voted upon at a particular time with the idea that they could vote it down and therefore were seeking, by their signatures,

to precipitate an election on that question.

The statement in the petition which was presented, asking the board "to call an election to submit to a vote of the qualified electors of said county of Lincoln the proposition to remove the county seat of said Lincoln county to Carrizozo" is not an application to remove the county seat; but it is an application which apparently presupposes that such a proposition had been inaugurated in the manner required by law and that for some reason the Board of County Commissioners were not acting on it. It is not at all inconsistent with the idea that the signers of that petition simply desired to take some steps to have the question settled for a time. They, not being learned in the law nor in its ways or mode of procedure, and probably not having the law before them when they signed the petition, might naturally suppose that the persons who had gone to the trouble of getting such petition had looked into the law and were following it in its language. They might also naturally suppose or believe that the language of the petition, simply calling for an election to vote on the proposition of change, did not require them to favor the change, but simply to favor getting an opportunity to vote and defeat the question.

The statute evidently intended that the people who might desire the change should have an opportunity to show that they wished the change, and therefore required that the petition should *actually ask for the change.* It did not require

that the petition should ask for the holding of an election to determine the question.

V.

THE ORDER MADE BY THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY FOR AN ELECTION DID NOT SPECIFY THAT THE ELECTION WAS TO BE HELD FOR ANY PURPOSE, AND WAS THEREFORE A NULLITY.

The order made says: "NOW, THEREFORE, in pursuance of the prayer of such petition and in accordance with the facts so found and with the statutes in such case made and provided, it is hereby ordered and directed that an election of the qualified electors of Lincoln County, New Mexico, be held in each of the precincts of said county on the 17th day of August, 1909, and at said election the tickets to be voted shall contain: 'For County SEAT————' with the name of the place for which the voter desires to cast his ballot, either printed or written thereon. Such ballots shall be canvassed as in elections for county officers and the returns of such election shall be certified by the probate clerk to the Territorial Secretary, together with a certified copy of the order of the County Commissioners and a sworn certificate of the publication thereof to be filed in the office of said Secretary."

It will be noticed that this order, which is quoted in full above, does not order as required by Section 630 as amended, "that the proposition to remove the county seat to the place named in the

petition be submitted to a vote of the qualified electors of said county." That is what the statute says the order of the commissioners shall be. The order of the commissioners as made does not order an election for any purpose whatever, much less the one specified in the act of the legislature. This we claim must have been done. The statute directs that the order shall be so made, and the order must express in it, in terms, the purpose for which the election is to be held.

VI.

THE ELECTION WHICH WAS HELD IN ADDITION TO NOT BEING AUTHORIZED BY LAW AND NOT BEING OTHERWISE HELD ACCORDING TO LAW, IS ALSO VOID BECAUSE THERE WAS NO REGISTRATION OF THE VOTERS.

Section 630, Chapter 80, of the alleged laws of 1909, provides: after the presentation of the petition therein provided for shall be made that:

"Said board shall make an order directing that the proposition to remove the county seat to the place named in the petition be submitted to a vote of the qualified electors of said county at the next general election, if the same is to occur within one year of the time of presenting said petition; otherwise at a special election to be called for that purpose at any time within two months from the date of presenting the petition."

The election which was held was not a general election, but was a special election, to be held

within two months from the presentation of the petition.

The petition, such as it was, was presented to the Board on July 6th. The full two months would not expire until the close of September 6th, 1909, or sixty-two days thereafter. The Commissioners on the next day after the presentation of the petition made its order calling the election. On that same day it was within the power of the Commissioners to have appointed the Boards of Registration. They had ample time to provide for the Board of Registration from the date of the presentation of the petition until the sixty-two days of those particular two months should expire.

Section 1709 of the Compiled Laws of 1897, provides:

"Sixty days before ANY election in this Territory, except as provided in Section One Thousand Seven Hundred and Twelve, it shall be the duty of the County Commissioners in their respective counties to appoint three capable persons, as a Board of Registration for each precinct in their respective counties, at least one of whom shall belong to a different political party from that of the said Board of County Commissioners."

Section 1710 also provides:

"It shall be the duty of the Board of Registration to make out in their respective precincts the lists of the legal voters, and these shall not be required to be present when registered."

It has been contended that because the law said that the board should make an order directing the proposition to remove the county seat to the place

named in the petition be submitted to a vote of the qualified electors of the county at the next general election, if the same is to occur within one year of the time of the presentation of said petition; otherwise at a special election to be called for that purpose at any time within two months from the date of presenting the petition, authorizing the Board of Commissioners to ignore the law which required the Board to appoint a Registration Board sixty days before *ANY* election. It is denied that the Board has power to ignore the law, or any law when it is within their power to comply with it. It is admitted that if the law had limited the time for the election to be held less than sixty days from the day of presenting the petition, that no registration would have been required, but it would not have been the Board of County Commissioners that ignored that law, but it would have been the legislature, the same authority that created the law that did it, and which, for that purpose, could have amended the law. The Board of County Commissioners were compelled to take notice that the law of the Territory required the appointment of a Registration Board for every election, when time enough could be given to appoint the Board, sixty days prior to the election. They were compelled to construe the present law in connection with the registration law of the Territory, as laws in *pari materia*, and were obliged to comply with both laws, if they could do so. They could not constitute themselves a legislative body to revoke the law of registration, nor could the Territorial leg-

islature delegate to them the power to do so.

Nor did the legislature intend to do so. It will not be contended and cannot be contended that if the election had been held at a general election, as provided that it might be, if the petition was presented less than a year before the general election, that there need not have been a registration of the voters of that election. Nor can it be contended that if the Board of Commissioners had fixed the election sixty-one or sixty-two days after the presentation of the petition, that there would not have had to be a registration of the voters. A registration of voters has been considered by the legislatures and by the courts as being a purifying measure, with reference to election and one made to facilitate the elections as being a matter of great benefit and aid in holding the election, and as securing the purity of the ballot, so far as voters are concerned. It cannot be contended that in a county seat election, where time enough could have been given to have a registration of the voters, according to law, that it was not intended to so have it, as it is well known that local questions of that kind create more feeling, work up more energy and enterprise and induce more fraud and corruption and illegal voting than any other character of election.

The legislature provided that the election should be held in two months, (not less than sixty nor more than sixty-two days) after the petition was presented, but in ample time to have a registration, can it be contended that the legislature intended that that election should not or might not

be held in accordance with the established and prescribed rules of holding the election and registering voters, if it could be done. Had the legislature intended that no registration should have been made they would have said so, or fixed the time so that it could not have been done. Should not the law be construed as if it read that they should hold the election within sixty days after the presentation of the petition in accordance with the requirements of the law in force regulating registration, if it could be done within that time. They could not have intended to allow the Board the option of including the registration law in the election or excluding it at their election. That would confer upon the Board the right to either execute the law or to ignore it or repeal it temporarily. Such a proposition cannot be entertained. The legislature might have done that, by fixing the time for holding the election less than sixty days, but when they fixed two months as the time, which in this case amounted to sixty-two days, the option of the Board could only have been exercised in fixing the election on the sixtieth, sixty-first, or sixty-second day, because it was possible to comply with the law of registration and absolutely important that it should be complied with, in order to secure the purity of the ballot and facilitate holding the election and the receiving of the ballots of the voters, very essential things to secure in an election of that peculiar character. The legislature certainly did not overlook the fact that in providing two months as the time within which the election should be held that

there was a law providing for the election of voters in *any* election, and it made no attempt to repeal that law but passed the act in question, if it did pass it, so that that law could also be carried into effect for the election. It is not a rule that any law shall be considered as amended or repealed by mere intendment or implication. It only can be done by intendment or implication when the intendment or implication make it absolutely necessary that the law shall stand repealed or amended. There is nothing in this act that shows that the legislature intended that the act in question should operate as a repeal of the registration law for the time being. On the contrary it left the election to be held under the registration law absolutely, if the petition should be presented less than a year before the general election, or of the election to be held sixty days after the petition was presented, and there can be no intendment or implication that the legislature conceived that the circumstances and conditions of any election held after the presentation of the petition would be different from one held sixty days after the presentation of the petition and that therefore there should be such a radical change in the requirement and necessities of the case that the registration should be dispensed with, as a necessary consequence the legislature intended and meant, without doubt, that all the laws of the Territory should be complied with, if it was possible to do so. Otherwise they would have directly dispensed with them in an affirmative manner and not have delegated their authority to a Board of County

Commissioners in a heated county seat question to dispense with them at their will, and as THEY might think, the having of a registration of voters or the not having of it would aid the side of the question they favor.

McCrary in his second edition on elections, Section 193, p. 145, says, that where a registry law is in force, and the legislature passes an act permitting a special election or authorizing one to be called, and the special act says nothing about registration, registration must be had in conformity with the registry law, when there is time given in the special act for such registration to be had, and that an election held without such registration is void. See also Sec. 135, p. 102.

Much more is this the case under statutes like ours which say that in ANY election in this Territory it shall be the duty of the Board to appoint a Board of Registration to register the voters.

Unless the legislature provides for the special election to be held in such limited time only as will not admit of a registration, and will not be within the power of the Board to give time enough to make the registration, the registration law must be complied with; if it is possible, to comply with it it must be done.

State vs. Scarburox, 110 N. C. P. 232.
Smith vs. Board of Co. Comm., 45 Fed. 725.

If the board had the right to fix the time too short in which to have a registration, would they not have the right also to fix the time too short to

appoint judges of election? Could they not also fix the time so short that they could not publish the notice of it? We submit that the only fair construction of that statute is, that the board were given two months in which to make investigation and inquiry as to the signers, etc., and to issue their proclamation for the election and that it was their duty to fix the election so as to comply with the other laws in force regulating the election, especially registration. To hold otherwise would be to confer upon the commissioners the delegated power of legislation to repeal the registration law so far as it applied to that kind of case. But that is a legislative power.

In the 2nd Edition of McCrary on Elections, Sec. 193 it is said: "Where a registry law is in force and the legislature passes an act permitting a special election or authorizing one to be called and the special act says nothing about registration, registration must be had in conformity with the registry law when there is time given in the special act for such registration to be had, and that an election held wtihout such registration is void."

Not only was there time sufficient in which to have a registration if the election was fixed at more than sixty days after the petition was presented, as was meant and intended that it should be, so as to comply with the statute in force, but there was ample time after the call was made July 7 within the two months from the date thereof, to have had the registration. A special statute does not repeal a general one unless there is an

absolute conflict between the two so they cannot stand together. If they can be construed together that must be done.

VII.

THE LOWER COURT SERIOUSLY ERRED IN CASE NO. 653 IN ASSUMING THAT THE ELECTION WHICH WAS HELD WAS BEING DIRECTLY QUESTIONED AND THAT EQUITY HAD NO JURISDICTION IN THE SUBJECT MATTER OF THAT SUIT, APPARENTLY HOLDING THAT NOTHING ELSE WAS INVOLVED EXCEPT THE LEGALITY OF THE VOTES AS GIVEN BY THE VOTERS AND THE CANVASSING OF THOSE VOTES. WHILE SUCH FACT IS A MERE INCIDENT IN THE CASE.

The court of Chancery has always exercised jurisdiction in cases similar with this, unless the statutes of a state working under constitutional authority provided some other tribunal to take jurisdiction. In every case referred to by the court as being against the court of chancery exercising jurisdiction it will be found that it was under a state government having a constitution, permitting the legislature to create judicial tribunals, or quasi-judicial tribunals for the determination of such questions, and where the situation is very different from what it is in a Territory.

In this Territory the Organic Act, which operates as our constitution provides that the judicial power in this Territory shall be vested in a Su-

preme Court, District Courts, Probate Courts and Justice of the Peace and certain courts which may be created in the different counties, over which the judges of the District Courts shall preside, and which last court is given jurisdiction in all cases wherein the United States is not a party.

The legislature of the Territory has no right or authority or power to confer judicial power upon any other body than those mentioned in the Organic Act. It cannot confer upon the Board of County Commissioners any judicial power to determine the validity of an election, or any other judicial questions which may be contraverted. All that the Board of County Commissioners, as a canvassing Board can do, is to canvass the returns that are sent in without crossing a t or dotting an i. They have no right to pass upon, look into o decide in regard to any fraud or illegality. They can only comply with the forms of the law and act as ministerial officers in ordering the election, appointing the registers and judges, receiving and canvassing the returns and announcing the result none of which duties require any judicial action. To pass upon the legality or illegality of any vote or any election is beyond their power and beyond the power of the legislature to empower them to do so.

It is a maxim of law that there is no wrong without a remedy provided for the same. The District Courts for the counties are given a very broad jurisdiction by the Act of Congress. Section 1874, U. S. R. S. says:

"The judges of the Supreme Court of each

Territory are authorized to hold court within their respective districts in the counties wherein by the laws of the Territory courts have been, or may be established for the purpose of hearing and determining ALL MATTERS AND CAUSES EXCEPT THOSE IN WHICH THE UNITED STATES IS A PARTY."

Could language be broader or more extensive? Could the territorial legislature limit or curtail that jurisdiction by conferring some power upon a non-judicial body and making the jurisdiction of that non-judicial body exclusive? That question must answer itself in the negative. In the absence of any express provision in the law providing which arm of the judicial power shall exercise control over the matters of an election in regard to a county seat where fraud, misrepresentation, deception, and corruption have intervened to pollute the election and destroy security, has not the long arm of the chancellor the power to reach out and take it in just as the high court of chancery in England did?

Our Supreme Court has in several instances decided that our chancery jurisdiction was the same as that of the high court of chancery of the court of England.

Hunike vs. Dold, 7 N. M. 11-12.
Garcia y Barela vs. Barela, 6 N. M. 245.

And the Supreme Court of the U. S. in Payne vs. Hook, 7 Wall. 430, and in various other cases has made the same decision. The Supreme Court of

this Territory and the District Court of this Terriry entertained jurisdiction in the case of Barry vs. Hull, 6 N. M. 643, which was exactly a similar case with the one at bar. Where could the trial judge obtain his authority within the scope of equity or judicial jurisprudence in this Territory to say as he did, that the court of equity had no jurisdiction to entertain and determine this case, and that there was no law of this territory which permitted this determination in any court? If that be true what has become of Sec. 1774 U. S. R. S., which says that the courts established in the several counties to be held by the justices of the Supreme Court shall have jurisdiction in *ALL matters and causes except those in which the U. S. is a party.*

To us that is constitutional. Our territorial legislature did not have to confer the power or the authority. It was given to us by that section by Congress and made the Supreme law of this land, unrepealable by the legislature or any other authority, except Congress itself, nor can it be lawfully disregarded by any authority.

VIII.

DEFENDANTS HAVE, BY THEIR PLEADINGS AND FAILURE TO ANSWER CERTAIN ALLEGATIONS OF THE COMPLAINT IN CASE NO. 653, WHICH ARE MATERIAL TO THE CAUSE, ADMITTED THE SAID ALLEGATIONS AS TRUE AND THEY ARE PRECLUDED FROM SETTING UP ANY THING AGAINST THEM, EXCEPT THAT

THEY ARE NOT MATERIAL, AND THE ADMISSIONS THEREBY MADE ARE SUCH THAT PLAINTIFF'S CASE IS THEREBY ABSOLUTELY ADMITTED AND ESTABLISHED.

Sub-Sec. 67 of Sec. 2665 of the C. LL. says: "Every material allegation of the complaint not controverted by the answer and every material allegation of new matter contained in the answer and not contraverted by the reply shall, for the purposes of the action, be taken as true."

The following allegations of the answer are not denied or in any manner otherwise answered, to-wit:

1. The complaint alleges that Chapter 80 of the printed laws of 1909, which was Council Bill No. 86, never was legally enacted.

There is no denial or other answer to the same.

2. The complaint alleges that the election pretended to have been held on the 17th day of August, 1909, under said Chapter 80, in reference to a change of the county seat of the County of Lincoln to Carrizozo was never lawfully held.

There is no denial or other answer to the same.

3. The complaint alleges that there was no petition as required by the said Chapter 80 ever presented to the Board of County Commissioners as preliminary to the holding of said election.

There is no denial or other answer to the same.

4. The complaint alleges that said pretended election for a change of the county seat was in violation of law. No legal petition therefor was presented to said Board of Lincoln County.

This allegation is not denied or otherwise answered.

5. The complaint alleges that in accordance with the provisions of Council Bill 86, which is Chapter 80 aforesaid, the sum of $40,000 was not deposited with the treasurer, or any other sum by any person or persons to build the court house and jail before any election could be held legally to change the county seat, or could be ordered to be held.

This was not denied or otherwise answered.

6. The complaint alleges that the county seat of Lincoln County has never been lawfully located or established at Carrizozo.

This allegation is not denied or otherwise answered.

7. The complaint alleges that the expenditure of the money of the county in the erection of a court house and jail, at Carrizozo, would be illegal and invalid and a total loss to said county.

This is not denied or otherwise answered.

8. The complaint alleges that a quorum of the Board of County Commissioners of Lincoln County, on July 7th, 1909, at a meeting of the said Board, illegally and wrongfully made an order calling an election to vote on the proposition to remove the county seat from Lincoln to Carrizozo, to be held on the 17th day of August, 1909.

This is not denied or otherwise answered.

9. The complaint alleges that the election which was ordered was held on said day without any registration of the voters of the County of Lincoln therefor.

This is not denied or otherwise answered.

Each and every one of the above mentioned allegations, which were not denied or otherwise answered, destroys any defense made by defendants to the action in their pleading, and they each and all or any portion of them establish the right of the plaintiff to the injunction prayed for, as they show that no lawful election was held and that the county seat was never lawfully located at Carrizozo; that no petition as required by that alleged act was ever presented to the Board of County Commissioners, and in fact, that the Board of County Commissioners never possessed any jurisdiction to order said election or cause the same to be held to receive or canvass the votes, to declare the result thereof, or to do or declare anything by which the county seat of Lincoln County was changed from Lincoln to Carrizozo, or located or established at Carrizozo. These allegations, which are admitted by not being denied, needed no proof to establish them. They stood as proof and as an absolute fact as they were alleged, and without the contrary of them being shown or their truth not being admitted in some way, they stand as unquestioned facts to determine the rights of the plaintiff in this case to the relief which they prayed for.

T. B. Catron,
Geo. B. Barber,
Attorneys for Plaintiff.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1912.

S. T. GRAY AND ROBERT BRADY,
vs.
ROBERT H. TAYLOR ET AL. — No. 653.

ATTORNEY GENERAL, EX REL.,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, NEW MEXICO. — No. 889

BRIEF O[illegible]ELLEES.

LEGALITY OF CHAPTER 80 OF THE LAWS OF 1909.

Appellants, in their brief concede that Chapter 80—the validity of which they have brought in question—was a part of the officially published laws of New Mexico of 1909, (page 2 of appellants' brief).

It is not claimed that Council Bill No. 86 did not pass both houses of the legislature, only that the presiding officers failed to place their certificates of passage thereon.

In *McDonald vs. State*, 80 Wis. 407, the court said:

"We think no court has ever declared an act of the legislature void for non-compliance with the rules of procedure made by itself, or the respective branches thereof, and which it or they may change or suspend at will."

"The signature of a presiding officer to a bill is a mere certificate to the governor that it has passed the requisite number of readings and been adopted by the constitutional majority of the house over which he presides."

Cottrell vs. State, 9 Neb. 125-128.

"Does the failure of the presiding officer of the senate to sign said bill invalidate everything connected therewith? If it does, then the presiding officer of the senate has more power to veto bills than the governor or than any other person or officer of the state."

Leavenworth County vs. Higginbothan, 17 Kan. 74.

"This court will presume that an act found among the published laws, bearing the approval of the governor, was constitutionally passed."

Ill. Central R. R. Co. vs. Wren, 43 Ill. 77; *Bedard vs. Hall*, 44 Ill. 91.

"Upon demurrer to an indictment on the ground that the statute on which it is based was not passed in a constitutional manner, the presumption of the validity of the law must prevail, since, until the journal entries are brought before the court, they will not be considered in passing upon the validity of the law."

State vs. Wray, 109 Mo. 594;

Opinion, pages 19-21, Transcript No. 653.

If the acts found in the officially published statute books can be brought in question simply upon the allegations of litigants, without further proof of their invalidity, there would ensue endless and needless confusion in all matters before the courts for adjudication. The reasonable presumption is that these official publications contain the enactments of the legislature and they should be discredited only upon proof of failure of their legal enactment. Although the burden was on the plaintiffs to prove their allegations, they have failed to make such proof.

Special and Local Legislation.

The only ground alleged by appellants as to the conflict between Chapter 80 of the laws of 1909 and the laws of the United States, is that the territorial act is local and special in its nature. This act is general in its terms and applies to all counties which come within its conditions. There is no proof in this case tending to show that every county in New Mexico does not come within those conditions and limi-

tations, though counsel has gone outside the record to urge that Lincoln is the only county of the class named in the statute.

"That the number is limited or restricted does not make the bill a private or local one within the constitutional meaning and intent of these words."

People vs. Squires, 107 N. Y. 593, and authorities cited;
1 Am. St. Rep. 893.

"A law is not necessarily a local law because the practical effect and operation of the law is and must be in every instance local, special and private. It is sufficient that the law offers like privileges to all who may comply with its terms or come within its provisions."

13 Am. & Eng. Enc. of Law (1st Ed.), 984.

"An act in general terms is valid."

Ritchie vs. Franklin County, 89 U. S. (22 Wall.) 67.

"This construction by the Supreme Court of the State which enacted the law is conclusive in this court, as well as everywhere, as to its character."

Hammond & Company vs. Hastings, 134 U. S. 401.

The Supreme Court of New Mexico declared this act to be general and not in conflict with the acts of Congress. *Codlin vs. Kohlhousen*, 9 N. M. 565. In both the cases at bar that court reaffirmed the decision

in the case referred to. See opinion in No. 653, 40-44, No. 889, 24.

Registration of Voters.

The appellants contend that a registration of the voters of the county was necessary and that the failure to procure such registration invalidated the election.

Section 1702, Compiled Laws, 1897, provides for a registration only before a general election. This section, enacted in 1889, clearly repeals, by implication, Section 1709, passed in 1869, as it covers the whole subject of the older law and was intended as a substitute therefor.

U. S. vs. Tynen, 11 Wall. 88-89;
Bartlett vs. King, 12 Mass. 545;
Commonwealth vs. Cooley, 27 Mass. 37;
Tracy vs. Tuffy, 134 U. S. 206;
U. S. vs. Barr, 4 Sawyer, 254;
Swan vs. Buck, 30 Miss, 268-308;
School District vs. Whitehead, 13 N. J. Eqt. 290-291;
Roche vs. Jersey City, 11 Vroom, 262.

The Supreme Court of New Mexico has decided in the cases at bar that no registration was necessary. 40-44 and 45-46 of record No. 653 and 24 of record 889.

Form of the Petition.

Objection is made to the form of the petition

submitted to the Board of County Commissioners. The only prayer the board could have granted was just what the petitioners asked for, and that was to call an election for the purpose of voting on the proposition to remove the county seat to Carrizozo. The board could not change the county seat; it could only call an election under the statute. There could be no question as to the object and purpose of the petition; it could not have meant to secure the retention of the county seat at Lincoln; the purpose and intent was so apparent that none could be deceived or misled thereby; it expressly stated that the election was to be for a removal to Carrizozo, the place and the only place designated, by the only method prescribed by the act—an election.

The petition was in substantial compliance with the statute. *Gray et al. vs. Taylor et al.*, at bar, pages 40-44 of transcript No. 653.

Apellants claim that many signed the petition under the belief that it meant to secure the retention of the county seat at Lincoln, and undertake to give color to such claim by the statement that the number of votes actually cast for Carrizozo fell two hundred or more short of the total number of names signed to the petition (pages 80-81 of appellants' brief).

It is shown that 900 votes were cast for Carrizozo and 613 for Lincoln, (paragraph 6, page 16 of transcript No. 889), but inasmuch as there is no record of the number of names signed to the petition no computation can be made and this claim cannot be

aided by a simple statement of appellants, unsupported by the proof. Nor is there any proof that any signer was induced to place his name to the petition by being led to think its purpose was to retain the county seat at Lincoln. If fraud and misrepresentation were resorted to in a few instances as claimed, this could not have had relation to the form of the petition as that spoke for itself to every one signing it.

There was a large excess of names to the petition over the requisite number after deducting all who claimed to have signed it through misrepresentations, (page 20, transcript No. 653), and the proof shows an unusually fair election, where only one vote was cast illegally and that one was cast for the town supported by appellants (pages 20-21, transcript No. 653).

These records and the transactions pertaining to the removal of this county seat appear to lead to the irresistible conclusion that the people of Lincoln County, New Mexico, by a large majority, fairly and honestly desired the change. Their interests as well as their convenience demanded the location of their county seat upon the main line of railroad running through the county, at the principal town in the county, from a place with little population and which is practically inaccessible, and subterfuges and groundless technicalities should not be used and considered to defeat these material interests and desires.

JOHN Y. HEWITT,
ANDREW H. HUDSPETH,
Attorneys for Appellees.

GRAY *v.* TAYLOR ET AL., AND LINCOLN COUNTY, TERRITORY OF NEW MEXICO.

TERRITORY OF NEW MEXICO, BY CLANCY, ATTORNEY GENERAL, ON THE RELATION OF ARAGON *v.* BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, NEW MEXICO.

APPEALS FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

Nos. 322, 483. Submitted January 6, 1913.—Decided January 20, 1913.

In determining whether a statute is a local act of the nature prohibited by the Constitution, the legislature will not be supposed to be less faithful to its obligations than the court.

A local law means one that in fact even if not in form is directed only to a specific spot.

A law is not necessarily a local law because it happens to affect a particular spot.

The law of New Mexico Territory requiring that changes of county seats shall not be made under certain conditions is not violative of the act of 1886 prohibiting the Territory from passing local laws because those conditions happen to apply to certain localities.

In determining questions from the Territories not based on Federal law this court inclines towards following the local courts, *Treat* v. *Grand Canyon Ry. Co.*, 222 U. S. 448, and so *held* as to questions relating to the passage of an act of the legislature of the Territory.

Following the Supreme Court of the Territory *held* that the act of the legislature was properly passed, and the petition for change of county seat, and the ballots were not irregular.

A statute requiring the appointment for certain elections of a Registration Board sixty days before election does not apply to a special election ordered by a subsequent act to take place within sixty days after presentation of a petition.

15 New Mex. 742 and 16 New Mex. 467, affirmed.

THE facts are stated in the opinion.

Mr. T. B. Catron and *Mr. George B. Barber* for appellant:

Chapter 80 of the Laws of 1909, relied on as the basis of the right to change the county seat in question, is both a local law, and also a special law, and if otherwise legally enacted is in violation of the Springer Act of July 30, 1886, and is illegal and void and conferred no right to change a county seat in New Mexico.

As to what constitutes a local, special act, or private acts, see *People* v. *Supervisors*, 43 N. Y. 16; *Matter* v. *Henneberger*, 155 N. Y. 424–427; *People* v. *O'Brien*, 38 N. Y. 193; *Ferguson* v. *Ross*, 126 N. Y. 464; *Closson* v. *Trenton*, 48 N. J. L. 439; *Commonwealth* v. *Patten*, 88 Pa. St. 260; *Davis* v. *Clark*, 106 Pa. St. 260; *McCarthy* v. *Commonwealth*, 110 Pa. St. 246 *et seq.*; *Montgomery* v. *Commonwealth*, 91 Pa. St. 125; *Devine* v. *Commissioners*, 84 Illinois, 591 *et seq.*; *State* v. *Herrman*, 75 Missouri, 346; *Scowden's Appeal*, 96 Pa. St. 424–425; *Klokke* v. *Dodge*, 103 Illinois, 125; *State* v. *Mitchell*, 21 Oh. St. 592; *State* v. *Judges*, 21 Oh. St. 11; *Strange* v. *Dubuque*, 62 Iowa, 205; Suth. on Stat. Const., §§ 127, 128, 129, and cases cited; Smith's Com., §§ 595, 596; Sedgwick, Const. Law, 32; Potters' Dwarris on Stats. 355; *Ex parte Westerfield*, 55 California, 552; *Desmond* v. *Dunn*, 55 California, 251; Sedgwick on Stat. Cons., § 127; *Van Riper* v. *Parsons*, 40 N. J. L. 123; *Zeigler* v. *Gadis*, 44 N. J. L. 363; *Hammer* v. *State*, 44 N. J. L. 669; *People* v. *Supervisors*, 43 N. Y. 16.

Private acts are those relating to a particular place, or to several particular places, or to one or several particular counties. 1 Kent, Comm. 415; 3 Bouvier Institutes, 95; Jacob's Law Dict. voce Statute; 2 Dwarris on Statutes, 463; *Ferguson* v. *Ross*, 126 N. Y. 464; *Matter* v. *Henneberger*, 155 N. Y. 425; *Van Giessen* v. *Bloomfield*, 47 N. J. L. 442; *Closson* v. *Trenton*, 48 N. J. L. 440; *Davis* v. *Clark*, 106 Pa. St. 384; *McCarthy* v. *Commonwealth*, 110 Pa. St. 246.

It is admitted that classification, even where not specially recognized by nature, custom, the laws of trade, or the Constitution must, in certain cases, be adopted *ex necessitate*, as in the case of cities under the act of May 23, 1874; *Wheeler* v. *Philadelphia*, 27 P. F. S. 338, and *Kilgore* v. *Magee*, 4 Nor. 401. See also *Davis* v. *Clark*, 10 Out. (106 Pa. St.) 377; *Commonwealth* v. *Patten*, 7 Nor. 260, and *Scowden's Appeal*, 15 Nor. 425.

Of all forms of special legislation that under the attempted disguise of a general law is the most vicious. *Devine* v. *Commissioners*, 84 Illinois, 591; *Klokke* v. *Dodge*, 103 Illinois, 126. See also *Codlin* v. *County Commissioners*, 9 New Mex. 577.

Chapter 80 of the Laws of 1909, even if it was not a local or special law, never was legally enacted, was not approved by the governor nor was it ever signed by the president of the council or speaker of the House of Representatives. There is no evidence that it ever reached the governor more than three days before the adjournment of the legislature. See § 1842, Rev. Stat.; *Field* v. *Clark*, 143 U. S. 671; *Panghorn* v. *Young*, 32 N. J. L. 30; Cooley on Const. Lim., 7th ed., 124.

The plaintiff made a prima facie case, and the burden was thrown on defendants to establish the necessary facts to show that Chapter 80 has become a law by legal enactment. *State* v. *Howell*, 26 Nevada, 98; *State* v. *Swift*, 10 Nevada, 182 *et seq.*; *Sherman* v. *Story*, 30 California, 256.

The provisions of the second clause of § 631 of the Compiled Laws prescribing the form of the ballot is not and cannot be made applicable to the election in question, the ballot as prescribed is in an unintelligible form to the average voter, is deceiving and misleading and makes it uncertain to the average voter how he should vote, and this is also applicable to the order for the election which prescribed the form of the ballot.

The election was void because no petition "asking for

the removal of the county seat of said county to some other designated place," or to Carrizozo was ever presented to or acted on by the Board of County Commissioners of Lincoln county, when they called the election to be held August 17, 1909.

A petition of this kind, which did not inform the signer that he was actually asking for the removal of the county seat to Carrizozo, as the statute required he should do before an election was held, is deceptive; doubtless signers were deceived by believing that the petition only asked for a vote on the proposition, and that the time was opportune for them to vote on it so as to retain it at Lincoln. *Lilly* v. *Lakin*, 56 Alabama, 122; *Tally* v. *Grider*, 66 Alabama, 122; *Lanier* v. *Padgett*, 18 Florida, 843-844; *McKinley* v. *Commissioners*, 26 Florida, 264 *et seq.*; *Zeiler* v. *Chapman*, 53 Missouri, 405-406; *State ex rel. Lexington* v. *Saline Co.*, 45 Missouri, 242; *State* v. *Saline Co. Ct.*, 48 Missouri, 390; *State* v. *Woodson*, 67 Missouri, 336; *State* v. *Albin*, 44 Missouri, 348-349; *Detroit* v. *Bearss*, 39 Indiana, 598; *People's Bank* v. *Pomona*, 48 Kansas, 55; *Culver* v. *Hayden*, 1 Vermont, 359; Blackwell, Tax Titles, 213; *Pitkin* v. *McNair*, 56 Barb. 77-78; *Wheeler* v. *Mills*, 40 Barb. 644; *Brun* v. *Eastman*, 50 Barb. 639; *People* v. *Kopplekom*, 16 Michigan, 342; *Nefzger* v. *Railway*, 36 Iowa, 644; *State* v. *Piper*, 17 Nebraska, 618, 619; *Adrienne* v. *McCafferty*, 2 Rob. (N. Y.) 353.

The order made by the Commissioners for an election did not specify that the election was to be held for any purpose, and was therefore a nullity.

The election is also void because there was no registration of the voters.

Unless the legislature provides for the special election to be held in such limited time only as will not admit of a registration, and will not be within the power of the Board to give time enough to make the registration, the registration law must be complied with; if it is possible

to comply with it, it must be done. *State* v. *Scarbrox*, 110 N. C. P. 232; *Smith* v. *Board of Comm.*, 45 Fed. Rep. 725. McCrary on Elections, 2d ed., § 193.

Mr. John Y. Hewitt and *Mr. Andrew H. Hudspeth* for appellees

MR. JUSTICE HOLMES delivered the opinion of the court.

The first of these suits is a bill in equity brought by tax-payers to restrain the County Commissioners of Lincoln County from erecting a court house and jail in the town of Carrizozo, the board assuming that the county seat has been changed from Lincoln to that town. The second is a quo warranto at the relation of a tax-payer against the same board to stop the same and other proceedings taken by the board on the same ground. The Supreme Court of the Territory affirmed a decree dismissing the bill and also a judgment denying the quo warranto. 15 N. Mex. 742. 16 N. Mex. 467. Both cases raised the question whether the attempted change of the county seat was void, and turn on the same facts, which may be stated in connection with the several objections that the appellants take.

In the first place it is said that the statute under which the attempted change took place is void because it is a local law, and the act of Congress of July 30, 1886, c. 818, § 1, 24 Stat. 170, provides that the Legislature of the Territory shall not pass local or special laws in the matter among others of changing county seats. The statute, being c. 80 of the Laws of New Mexico of 1909, is thought to be local because by § 2 it enacts that the place to which it is proposed to remove the county seat 'shall be at least twenty miles distant from the then county seat of said county, and that no proposition to remove a county seat from a place situated on a railroad to one not so situated shall be entertained. It is argued at great length and is obvious that at any given time this enactment does not bear in the same way on every part of the Territory.

In its present form the statute may be specially favorable to the change from Lincoln to Carrizozo, if, as is said, the latter town is on a railroad and Lincoln is not. It may be admitted that a local act could be disguised in general terms, if a legislature would condescend to evading its duties under a constitution or organic act. It may be assumed that general words are not necessarily enough to disguise such an intent. But it is not lightly to be supposed that a legislature is less faithful to its obligations than a court. General words indicate and affirm a general intent, and if the fact that different sections are differently affected is enough to make a law local the field of legislation would be narrowed beyond anything that Congress could have dreamed. It cannot have been intended for instance that no laws should be passed concerning cities or towns, yet such laws would be local in their application. The phrase local law means, primarily at least, a law that in fact if not in form is directed only to a specific spot. If it has a wider meaning it involves questions of degree that cannot be decided by putting cases other than the one before us. We know nothing that would warrant us in declaring that this law was not intended according to its purport to regulate generally the change of county seats. *Ritchie* v. *Franklin County*, 22 Wall. 67.

The full discussion in *Codlin* v. *Kohlhousen*, 9 N. Mex. 565, has lost but little of its force and applicability notwithstanding the later amendment of the statute. The law is shown not to be a local law, and with regard to the twenty-mile limit it is said to be only reasonable to believe that the Legislature intended, in fixing it, "to prevent cities and towns situated within a few miles of each other from engaging in those injurious contests for the supremacy for the location of the county seat, based upon population only. The wisdom of these conditions is apparent, and it is within the power of the legislature to make them."

However it may be as to the foregoing question, which

arises under an act of Congress, the other objections are of a kind as to which we often have intimated our strong leaning toward following the local courts, and therefore will not be discussed at length. *Fox* v. *Haarstick*, 156 U. S. 674, 679. *Treat* v. *Grand Canyon Ry. Co.*, 222 U. S. 448, 453. In the first place it is said that the statute was not approved by the Governor and does not appear to have reached him more than three days before the adjournment of the Legislature so as to have become a law by Rev. Stat., § 1842. Also it is said that the bill was not signed by the President of the Council or the Speaker of the House of Representatives, as required by the respective rules of those bodies. But the act appears in the official copy of the laws of 1909, it passed the two houses in fact, and in ample time to be submitted to the Governor. The Governor returned the bill to the Council with the statement that he had allowed it to become a law by limitation. We agree with the court below that the Governor's message is as good evidence as a note of the date on the bill that the bill had been received long enough before the return to make his statement correct. *Gardner* v. *Collector*, 6 Wall. 499, 508, 509. The journals of the two houses showed the passage of the bill and we certainly should not reverse the local decision that the evidence, if necessary, was admissible and sufficient in aid of the act.

The next objection is to the form of the petition by which the proceedings for the change were begun. The statute provides that the Board of County Commissioners shall order a vote whenever citizens of a county equal in number to at least one-half of the legal votes cast at the last preceding general election in the county shall present a petition asking for the removal of the county seat to some other designated place. The petition asked the Board "to call an election and submit to a vote . . . the proposition to remove the county seat of said Lincoln County to Carrizozo," etc. It is said that this did not ask

for the removal, and if read with extreme technicality it did not, in so many words. But the petition very well might be held to imply that the proposition to remove emanated from those who signed, the only persons from whom it could emanate under the law that the petitioners had in mind.

Again it is said that the ballot was in an unintelligible and misleading form. The Board following the statute, Compiled Laws, 1897, § 631, ordered that "the tickets voted shall contain 'For County Seat' with the name of the place for which the voter desires to cast his ballot, either written or printed thereon." If the court was of opinion that the voters would understand that those in favor of Carrizozo would write that word on the ticket and those opposed to a change would write Lincoln, we could not say that they overrated the intelligence of their fellow citizens. There was no evidence that the voters were deceived. But it is enough that the statute was followed. There is no ground on which the law could be declared void.

It is objected that there was no registration of voters, as required in general terms by § 1709 of the Compiled Laws. But that section required the County Commissioners to appoint a Board of Registration sixty days before any election, and as the statute concerning the change of county seats in case of a special election required it to be called 'at any time within two months of the date of presenting said petition,' it naturally was held that the case was taken out of § 1709 by the latter act.

It is objected that various allegations of the bill were admitted because not denied. If any such matter is open the allegations not denied were mainly if not wholly erroneous conclusions of law from the facts proved at the trial. *Equitable Life Assurance Society* v. *Brown*, 213 U. S. 25, 43. But it is not open. The argument seems to us to need no further or more elaborate reply.

Decree affirmed.

Judgment affirmed.